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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 10265 of September 27, 2021

National Voter Registration Day, 2021

By the President of the United States of America

A Proclamation

The right to vote is central to who we are as a Nation and a people—it defines us as Americans, propels us to ever-greater progress, and serves as the foundation of our liberty. Voting provides Americans with a voice in building the country we want to live in together and the country we hope to leave to our children and grandchildren. The right to vote freely and fairly, and to have our vote counted, is a sacred and fundamental part of our Nation's character. With it, anything is possible for America; without it, nothing is.

For our democracy to work, it is up to all of us to protect the right to vote—and to exercise it. The first step that all of us can take is to make sure that we are registered to vote. Each year, National Voter Registration Day reminds us of our right and our responsibility, as individual citizens and as one Nation, to exercise the sacred right to vote and ensure that our voices are heard.

Through great sacrifice and the courage of generations of civil rights leaders and activists, we have made strides to ensure that more Americans are able to take part in the democratic process. We have repeatedly amended the Constitution to expand voting access across our history, and landmark legislation like the Indian Citizenship Act of 1924 and the Voting Rights Act of 1965 have helped to make those constitutional promises real and meaningful for more and more of our people.

But this work remains unfinished. Today, the right to vote is being suppressed and subverted in many parts of the country by shameful attempts to restrict Americans' access to the ballot and the rolling back of decades of voting rights progress. This assault—largely targeting Americans of color, as such assaults so often have through the darkest chapters of our history, is an attack on our democracy, on our liberty, and on who we are as Americans. As my friend, American hero Representative John Lewis, reminded us shortly before he passed, 'Democracy is not a state; it is an act.' It is our shared responsibility to act as one people to secure the basic promise of American democracy.

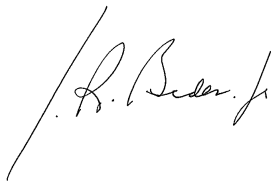
My Administration has taken firm and far-reaching action to expand and protect voting rights. Earlier this year, I issued an Executive Order to promote access to voting. This order established a whole-of-government effort directing Federal agencies to expand access to voter registration and election information, especially in some of our most underserved communities. My Administration also supports Federal legislation to set basic national standards for fair registration and voting in Federal elections and to protect against racial discrimination and the subversion of the election process. Guaranteeing the right to vote and ensuring that every vote is counted has always been one of the most patriotic things we can do, and my Administration is committed to safeguarding and strengthening our democracy.

As we observe National Voter Registration Day, I encourage all eligible Americans to make sure they are registered to vote—to check their registration status and ensure that their registration is accurate and up to date—and to help their neighbors, family, and friends to do the same. Visit Vote.gov

for more information on how to register to vote. I also urge policymakers and citizens across the country, of all parties, to join me in defending, strengthening, and expanding this paramount constitutional right.

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 September 28, 2021, as National Voter Registration Day. I call on all Americans to observe this day by ensuring they are registered to vote, and thereby prepared to stand up for our democracy and the vitality and integrity of our elections.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of September, 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.



[FR Doc. 2021–21449
Filed 9–29–21; 8:45 am]
Billing code 3295–F1–P

Rules and Regulations

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 217

RIN 1601–AA94

Designation of Croatia for the Visa Waiver Program

AGENCY: Office of the Secretary; Department of Homeland Security (DHS).

ACTION: Final rule; technical amendment.

SUMMARY: Eligible citizens, nationals, and passport holders from designated Visa Waiver Program countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant noncitizens for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. On September 28, 2021, the Secretary of Homeland Security, in consultation with the Secretary of State, designated Croatia as a country that is eligible to participate in the Visa Waiver Program. Accordingly, this rule updates the list of countries designated for participation in the Visa Waiver Program by adding Croatia.

DATES: This final rule is effective on December 1, 2021.

FOR FURTHER INFORMATION CONTACT: Eric Peters, Department of Homeland Security, Visa Waiver Program Office, (202) 790–5207.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Visa Waiver Program

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security (the Secretary), in consultation with the Secretary of State, may designate certain countries as Visa Waiver Program (VWP) countries [1] if certain requirements are met. Those requirements include: (1) A U.S. Government determination that the country meets the applicable statutory requirement with respect to nonimmigrant visitor visa refusals for nationals of the country; (2) a U.S. Government determination that the country extends or agrees to extend reciprocal privileges to citizens and nationals of the United States; (3) an official certification that it issues machine-readable, electronic passports that comply with internationally accepted standards; (4) a U.S. Government determination that the country's designation would not negatively affect U.S. law enforcement and security interests; (5) an agreement with the United States to report, or make available through other designated means, to the U.S. Government information about the theft or loss of passports; (6) a U.S. Government determination that the government accepts for repatriation any citizen, former citizen, or national not later than three weeks after the issuance of a final executable order of removal; and (7) an agreement with the United States to share information regarding whether citizens or nationals of the country represent a threat to the security or welfare of the United States or its citizens.

The Immigration and National Act (INA) also sets forth requirements for continued eligibility and, where appropriate, probation and/or termination of program countries.

Prior to this final rule, the designated countries in the VWP were Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan,[2] and the United Kingdom.[3] *See* 8 CFR 217.2(a).

Citizens and eligible nationals of VWP countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. To travel to the United States under the VWP, any person who is not a citizen or national of the United States (hereinafter a ''noncitizen'') must satisfy the following:

(1) Be seeking admission as a nonimmigrant visitor for business or pleasure for ninety days or less;

(2) be a national of a program country;

(3) present a machine-readable, electronic passport issued by a designated VWP participant country to the air or vessel carrier before departure;

(4) execute the required immigration forms;

(5) if arriving by air or sea, arrive on an authorized carrier;

(6) not represent a threat to the welfare, health, safety, or security of the United States;

(7) have not violated U.S. immigration law during any previous admission under the VWP;

(8) possess a round-trip ticket, unless exempted by statute or federal regulation;

(9) the identity of the noncitizen has been checked to uncover any grounds on which the noncitizen may be inadmissible to the United States, and no such ground has been found;

(10) certain aircraft operators, as provided by statute and regulation, must electronically transmit information about the noncitizen passenger;

(11) obtain an approved travel authorization via the Electronic System for Travel Authorization (ESTA). For

[1] All references to ''country'' or ''countries'' in the laws authorizing the Visa Waiver Program are read to include Taiwan. *See* Taiwan Relations Act of 1979, Public Law 96–8, section 4(b)(1) (codified at 22 U.S.C. 3303(b)(1)) (providing that ''[w]henever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan''). This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

[2] Taiwan refers only to individuals who have unrestricted right of permanent abode on Taiwan and are in possession of an electronic passport bearing a personal identification (household registration) number.

[3] The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands, and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries.

more information about the ESTA, please see 8 CFR 217.5 (regulation effective July 8, 2015), 80 FR 32267 (June 8, 2015), 75 FR 47701 (Aug. 9, 2010);

(12) has not been present, at any time on or after March 1, 2011 in Iraq, Syria, countries designated by the Secretary of State, or countries designated by the Secretary of the Department of Homeland Security, during the period of those countries' designations, in accordance with 8 U.S.C. 1187(a)(12)(D), subject to statutorily delineated exemptions or a waiver authorized by the Secretary; and

(13) waive the right to review or appeal a decision regarding admissibility or to contest, other than on the basis of an application for asylum, any action for removal. *See* sections 217(a) and 217(b) of the Immigration and Nationality Act (INA), 8 U.S.C. 1187(a)–(b); *see also* 8 CFR part 217.

B. Designation of Croatia

The Department of Homeland Security, in consultation with the Department of State, has evaluated Croatia for VWP designation to ensure that it meets the requirements set forth in section 217 of the INA, as amended by section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53. The Secretary has determined that Croatia has satisfied the statutory requirements for initial VWP designation; therefore, the Secretary, in consultation with the Secretary of State, has designated Croatia as a program country.[4]

This final rule adds Croatia to the list of countries authorized to participate in the VWP. Accordingly, beginning December 1, 2021, eligible citizens and nationals of Croatia may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for business or pleasure for a period of ninety days or less without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements.

II. Statutory And Regulatory Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The final rule merely lists a country that the Secretary of Homeland Security, in consultation with the Secretary of State, has designated as a VWP eligible country in accordance with section 217(c) of the INA, 8 U.S.C. 1187(c). This amendment is a technical change to merely update the list of VWP countries. Therefore, notice and comment for this rule is unnecessary and contrary to the public interest because the rule has no substantive impact, is technical in nature, and relates only to management, organization, procedure, and practice.

This final rule is also excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States because it advances the President's foreign policy goals and directly involves relationships between the United States and its noncitizen visitors. Accordingly, DHS is not required to provide public notice and an opportunity to comment before implementing the requirements under this final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public, a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required ''to publish a general notice of proposed rulemaking for any proposed rule.'' Because this rule is being issued as a final rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

DHS has considered the impact of this rule on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The individual noncitizens[5] to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). Accordingly, there is no change expected in any process as a result of this rule that would have a direct effect, either positive or negative, on a small entity.

C. Unfunded Mandates Reform Act of 1995

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

D. Executive Order 12866

This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

E. Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

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

G. Paperwork Reduction Act

The Department of Homeland Security is modifying the Office of Management and Budget (OMB) Control Number 1651–0111, Arrival and Departure Record, to allow eligible Croatia passport holders to use an ESTA to apply for authorization to travel under the VWP prior to departing for the United States. U.S. Customs and Border Protection (CBP) uses the information to assist in determining if an applicant is eligible for travel under the VWP. The Department is requesting emergency processing of this change to 1651–0111 as the information is essential to the mission of the agency and is needed prior to the expiration of time periods established under the Paperwork Reduction Act of 1995 (PRA). Because of the designation of Croatia for participation in the VWP, the Department is requesting OMB approval of this information collection in accordance with the PRA (44 U.S.C. 3507).

The addition of Croatia to the VWP will result in an estimated annual increase to information collection 1651–0111 of 30,000 responses and 7,500 burden hours. The total burden hours for ESTA, including Croatia, is as follows:

Estimated annual reporting burden: 3,750,000 hours.

[4] The Secretary of State nominated Croatia for participation in the VWP on August 2, 2021.

[5] As used in this final rule, the term ''noncitizen'' means any person not a citizen or national of the United States. *See* 8 U.S.C. 1101(a)(3).

Estimated number of respondents: 15,000,000 respondents.

Estimated average annual burden per respondent: 15 minutes.

List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

Amendments to the Regulations

For the reasons stated in the preamble, DHS amends part 217 of title 8 of the Code of Federal Regulations (8 CFR part 217), as set forth below.

PART 217—VISA WAIVER PROGRAM

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

■ 2. In § 217.2(a), the definition of ''Designated country'' is revised to read as follows:

§ 217.2 Eligibility.

(a) * * *

Designated country refers to Andorra, Australia, Austria, Belgium, Brunei, Chile, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands, and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries. Taiwan refers only to individuals who have unrestricted right of permanent abode on Taiwan and are in possession of an electronic passport bearing a personal identification (household registration) number.

* * * * *

Alejandro N. Mayorkas,

Secretary.

[FR Doc. 2021–21136 Filed 9–29–21; 8:45 am]

BILLING CODE 9110–9M–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2021–0052]

RIN 3150–AK63

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

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of October 19, 2021, for the direct final rule that was published in the **Federal Register** on August 5, 2021. This direct final rule amended the NAC International NAC–UMS® Universal Storage System listing in the ''List of approved spent fuel storage casks'' to include Amendment No. 8 to Certificate of Compliance No. 1015. Amendment No. 8 revises the certificate of compliance to add the storage of damaged boiling-water reactor spent fuel, including higher enrichment and higher burnup spent fuel; change the allowable fuel burnup range; expand the boiling-water reactor class 5 fuel inventory that could be stored in the cask; and revise definitions in the technical specifications.

DATES: The effective date of October 19, 2021, for the direct final rule published August 5, 2021 (86 FR 42681), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2021–0052 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0052. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The proposed amendment to the certificate of compliance, the proposed changes to the technical specifications, and the preliminary safety evaluation report are available in ADAMS under Package Accession No. ML20358A254. The final amendment to the certificate of compliance, the final changes to the technical specifications, and the final safety evaluation report are available in ADAMS under Package Accession No. ML21253A235.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James Firth, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6628, email: *James.Firth@nrc.gov.*

SUPPLEMENTARY INFORMATION: On August 5, 2021 (86 FR 42681), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* for the NAC International NAC–UMS® Universal Storage System listing in the ''List of approved spent fuel storage casks'' to include Amendment No. 8 to Certificate of Compliance No. 1015. Amendment No. 8 revises the certificate of compliance to add the storage of damaged boiling-water reactor spent fuel, including higher enrichment and higher burnup spent fuel; change the allowable fuel burnup range; expand the boiling-water reactor class 5 fuel inventory that could be stored in the cask; and revise definitions in the technical specifications. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on October 19, 2021. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated: September 23, 2021.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–21063 Filed 9–29–21; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0726; Project Identifier 2019–CE–059–AD; Amendment 39–21724; AD 2021–19–06]

RIN 2120–AA64

Airworthiness Directives; RUAG Aerospace Services GmbH (Type Certificate Previously Held by Dornier Luftfahrt GmbH) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2007–02–13, which applied to certain Dornier Luftfahrt GmbH (type certificate currently held by RUAG Aerospace Services GmbH) Model Dornier 228–212 airplanes. AD 2007–02–13 required inspecting the landing gear carbon brake assembly. This AD requires inspecting certain carbon brake assemblies and corrective actions if necessary. This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the European Union Aviation Safety Agency (EASA) to correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as loose bolts and nuts on the landing gear carbon brake assembly. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 15, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 15, 2021.

The FAA must receive any comments on this AD by November 15, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany; phone: +49 (0) 8153–30–2280; fax: +49 (0) 8153–30–3030; email: *custsupport.dornier228@ruag.com*; website: *https://www.ruag.com/*. 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–2021–0726.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0726; 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 Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@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–2021–0726; Project Identifier 2019–CE–059–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 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 Doug Rudolph, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2007–02–13, Amendment 39–14900 (72 FR 3355, January 25, 2007) (AD 2007–02–13), for certain serial-numbered Dornier Luftfahrt GmbH (type certificate now held by RUAG Aerospace Services GmbH) Model 228–212 airplanes. AD 2007–02–13 required inspecting the landing gear carbon brake assembly and replacing if necessary. AD 2007–02–13 resulted from AD No. 2006–0352–E, dated November 24, 2006, issued by EASA, which is the Technical Agent for the Member States of the European Union. The FAA issued AD 2007–02–13 to prevent the brake assembly from detaching and malfunctioning, degrading brake performance, and potentially causing loss of control of the airplane during landing or rollout.

Actions Since AD 2007–02–13 Was Issued

Since the FAA issued AD 2007–02–13, EASA superseded its AD and issued EASA AD 2019–0307, dated December 18, 2019 (referred to after this as ''the MCAI''), to address an unsafe condition on all RUAG Aerospace Services GmbH (formerly Dornier Luftfahrt GmbH) Model Dornier 228–212 airplanes. The MCAI states:

> During a maintenance inspection, loose bolts and nuts were detected on the landing gear carbon brake assembly.
>
> This condition, if not detected and corrected, could result in detachment of the brake assembly and subsequent malfunction,

degrading brake performance, and loss of control of the aeroplane during landing or roll-out, possibly resulting in damage to the aeroplane and injury to occupants.

RUAG issued [alert service bulletin] ASB Dornier 228–265 (original issue) to provide instructions for a visual inspection of the bolts, the gap between brake housing subassembly and torque tube assembly and hydraulic plumbing. Consequently, the Luftfahrt-Bundesamt (LBA) issued a mandatory measure under [European Union] EU Regulation (EC) 1592/2002, Article 10(1) for affected aeroplanes registered in Germany and notified EASA. The Agency concurred with the LBA action and issued EASA Emergency AD 2006–0352–E to require inspection of the affected brake assembly and, depending on findings, replacement with a serviceable brake assembly.

Since that [EASA] AD was issued, RUAG was informed by the manufacturer of the brake assembly that anti-seize and screw locking compound have been applied in a wrong way during production of new brake assemblies.

Prompted by this finding, RUAG issued the ASB, as defined in this [EASA] AD, to amend the intervals (reducing the flight hours (FH) interval, adding a flight cycle (FC) interval and deleting the calendar time interval) of the repetitive inspections.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2006–0352–E, which is superseded, and requires the inspections within new compliance times.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0726.

Related Service Information Under 1 CFR Part 51

The FAA reviewed RUAG Dornier 228 Alert Service Bulletin No. ASB–228–265, Revision 2, dated December 10, 2019. This service information contains procedures for inspecting carbon brake assemblies having part/number (P/N) 5009850–1, P/N 5009850–2, P/N 5009850–3, or P/N 5009850–4 up to revision ''F'' for tight fit and damage of the bolts and self-locking nuts and for a gap between the brake housing subassembly and the torque tube subassembly, and taking corrective actions if any discrepancies (loose or damaged bolts and self-locking nuts or a gap between the brake housing subassembly and the torque tube subassembly) are found. 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**.

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 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 accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this AD and the MCAI.'' This AD also prohibits installing certain carbon brake assemblies unless they have passed an inspection.

Differences Between This AD and the MCAI

The MCAI has an initial compliance time of before further flight after November 27, 2006 (the effective date of EASA AD 2006–0352–E), while this AD has an initial compliance time of before further flight after the effective date of this AD. The MCAI requires contacting the manufacturer if any discrepancies are found, while this AD requires repair using an approved method or replacement.

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 airplanes 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.

Regulatory Flexibility Act

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

Costs of Compliance

There are currently no affected airplanes on the U.S. registry. In the event an affected airplane becomes a U.S.-registered product, the following is an estimate of the costs to comply with this AD.

The FAA estimates that it would take 1 work-hour per airplane 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 airplane per inspection cycle.

The extent of damage found during the required inspection could vary considerably from airplane to airplane. The FAA has no way of estimating how much damage may be found on each airplane or the cost to repair damaged parts.

Authority for This Rulemaking

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

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

Regulatory Findings

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

distribution of power and responsibilities among the various levels of government.

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2007–02–13, Amendment 39–14900 (72 FR 3355, January 25, 2007); and

■ b. Adding the following new airworthiness directive:

2021–19–06 UAG Aerospace Services GmbH (Type Certificate Previously Held by Dornier Luftfahrt GmbH): Amendment 39–21724; Docket No. FAA–2021–0726; Project Identifier 2019–CE–059–AD.

(a) Effective Date

This airworthiness directive (AD) is effective October 15, 2021.

(b) Affected ADs

This AD replaces AD 2007–02–13, Amendment 39–14900 (72 FR 3355, January 25, 2007).

(c) Applicability

This AD applies to RUAG Aerospace Services GmbH (Type Certificate Previously Held by Dornier Luftfahrt GmbH) Model Dornier 228–212 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 3200, Landing Gear System.

(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 MCAI identifies the unsafe condition as loose bolts and nuts on the landing gear carbon brake assembly. The FAA is issuing this AD to prevent detachment of the brake assembly and consequent malfunction, which, if not addressed, could result in degraded brake performance and loss of control during landing or rollout.

(f) Compliance

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

(g) Definitions

(1) For purposes of this AD, an affected part is a carbon brake assembly having part number (P/N) 5009850–1, P/N 5009850–2, P/N 5009850–3, or P/N 5009850–4.

(2) For purposes of this AD, a Group 1 airplane is an airplane with an affected part that has never been overhauled installed.

(3) For purposes of this AD, a Group 2 airplane is an airplane with an affected part that has been overhauled installed.

(h) Required Inspections and Corrective Actions

(1) For Group 1 airplanes: Before further flight and thereafter at intervals not to exceed 50 hours time-in-service (TIS) or 150 flight cycles, whichever occurs first, inspect each affected part for tight fit and damage of the bolts and self-locking nuts and for a gap between the brake housing subassembly and the torque tube subassembly, and take any necessary corrective actions before further flight in accordance with steps (1)a) through (1)c) of the Accomplishment Instructions in RUAG Dornier 228 Alert Service Bulletin No. ASB–228–265, Revision 2, dated December 10, 2019, except you are not required to contact the manufacturer. Instead, repair using a method approved by the Manager, International Validation Branch, FAA, or the European Union Aviation Safety Agency (EASA), or replace the brake assembly.

(2) For Group 2 airplanes: Before further flight and thereafter at intervals not to exceed 150 hours TIS, inspect each affected part for tight fit and damage of the bolts and self-locking nuts and for a gap between the brake housing subassembly and the torque tube subassembly, and take any necessary corrective actions before further flight in accordance with steps (2)a) through (2)c) of the Accomplishment Instructions in RUAG Dornier 228 Alert Service Bulletin No. ASB–228–265, Revision 2, dated December 10, 2019, except you are not required to contact the manufacturer. Instead, repair using a method approved by the Manager, International Validation Branch, FAA, or EASA, or replace the brake assembly.

(i) Parts Installation Limitation

As of the effective date of this AD, do not install an affected part on any airplane unless, prior to installation, you have complied with this AD.

(j) Credit for Previous Actions

You may take credit for the initial inspection and corrective actions that are required by paragraph (h) of this AD if you performed those inspections and corrective actions before the effective date of this AD using RUAG Dornier 228 Alert Service Bulletin No. ASB–228–265, Revision 1, dated September 2, 2019.

(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 Related Information, paragraph (l)(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.

(l) Related Information

(1) For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2019–0307, dated December 18, 2019, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2021–0726.

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

(m) Material Incorporated by Reference

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

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

(i) RUAG Dornier 228 Alert Service Bulletin No. ASB–228–265, Revision 2, dated December 10, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: +49 (0) 8153–30–2280; fax: +49 (0) 8153–30–3030; email: *custsupport.dornier228@ruag.com*; website: *https://www.ruag.com/*.

(4) You may view this service information at 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.

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

Issued on August 31, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–21097 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0559; Project Identifier MCAI–2021–00079–R; Amendment 39–21727; AD 2021–19–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–24–03, which applied to certain Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350D, AS355E, AS355F, AS355F1, and AS355F2 helicopters. AD 2020–24–03 required testing the UP/DOWN switches of a certain part-numbered DUNLOP cyclic stick grip, installing a placard, and revising the existing Rotorcraft Flight Manual (RFM) for your helicopter, or removing the DUNLOP cyclic stick grip. This AD retains some requirements of AD 2020–24–03 and also requires incorporating a new modification, and removing the placard and the RFM amendment installed previously as required by AD 2020–24–03. The additional actions are required as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by the development of a modification (MOD) procedure by Airbus Helicopters for the electrical wiring of the hoist control of the DUNLOP cyclic stick. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 4, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 4, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0559.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0559; 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: Daniel Poblete, Aerospace Engineer, Systems & Equipment Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5335; email: *daniel.d.poblete@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0023, dated January 19, 2021 (EASA AD 2021–0023) to correct an unsafe condition for Airbus Helicopters Model AS 350 and AS 355 helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–24–03, Amendment 39–21333 (85 FR 76955, December 1, 2020) (AD 2020–24–03). AD 2020–24–03 applied to Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350D, AS355E, AS355F, AS355F1, and AS355F2 helicopters with DUNLOP cyclic stick grip manufacturer part number (MP/N) AC66444 with UP/DOWN switches for rescue hoist control installed. The NPRM published in the **Federal Register** on July 12, 2021 (86 FR 36516). The NPRM was prompted by Airbus Helicopters developing MOD MC20096 and Airbus Helicopters issuing service information for performing this modification on the DUNLOP cyclic stick. The NPRM proposed to continue to require ground testing of the UP/DOWN switches, installing a placard, and revising the existing RFM for your helicopter. The NPRM also proposed to require modifying the electrical wiring of the DUNLOP cyclic stick and removing both the placard and RFM amendment previously installed as specified in EASA AD 2021–0023.

The FAA is issuing this AD to address inadvertent activation of the rescue hoist cable cutter function and consequent detachment of an external load or person from the helicopter hoist, possibly resulting in personal injury, or injury to persons on the ground, as specified in an EASA AD. See EASA AD 2021–0023 for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. As published in the NPRM, three instances of ''EASA AD 2020–0023'' have been changed to ''EASA AD 2021–0023'' in this Final rule. These minor changes correct a typographical error and the FAA has determined that they:

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

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0023 specifies procedures for installing the placard and revising the Flight Manual to prohibit the use of the UP/DOWN switches of the DUNLOP cyclic stick MP/N AC66444. EASA AD 2021–0023 also specifies procedures for modifying the electrical wiring of the DUNLOP cyclic stick and removing both the placard and RFM amendment previously installed.

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.

Differences Between This AD and the EASA AD

For helicopters with DUNLOP cyclic stick grip MP/N AC66444 with UP/DOWN switches for rescue hoist control installed, this AD requires accomplishing a ground test of the UP/DOWN switches for proper function before each hoist operation, whereas the EASA AD does not. Where EASA AD 2021–0023 refers to its effective date or the effective date of EASA Emergency AD 2020–0217–E, dated October 8, 2020, this AD requires using the effective date of this AD. Where the service information referenced in EASA AD 2021–0023 specifies ''work must be performed on the helicopter by the operator,'' this AD requires that the work be accomplished by a mechanic that meets the requirements of 14 CFR part 65 subpart D. Where the service information referenced in EASA AD 2021–0023 specifies to discard certain placards and Flight Manual pages (that were required by EASA AD 2020–0217–E), this AD requires removing them instead.

EASA AD 2021–0023 requires operators to ''inform all flight crews'' of revisions to the RFM, and thereafter to ''operate the helicopter accordingly.'' However, this AD does not specifically require those actions.

14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the RFM. Therefore, including a requirement in this AD to operate the helicopter according to the revised RFM would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the helicopter in such a manner would be unenforceable.

Where paragraph (4) of EASA AD 2021–0023 allows modifying a Group 2 helicopter into a Group 1 helicopter, this AD also requires accomplishing the requirements of paragraph (g)(1) of this AD. Finally, the service information referenced in EASA AD 2021–0023 requires reporting certain information, whereas this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 390 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour.

Accomplishing a ground test of the UP/DOWN switches for proper function takes a minimal amount of time for a nominal cost. Replacing a DUNLOP cyclic stick grip, if required, takes about 2.5 work-hours and parts cost about $2,500 for an estimated cost of $2,713. Installing the placard and revising the existing RFM for your helicopter takes about 0.5 work-hour for an estimated cost of $43 per helicopter and $16,770 for the U.S. fleet.

Modifying the electrical wiring of the DUNLOP cyclic stick takes up to 4 work-hours and parts cost $2,147 for an estimated cost of up to $2,487 per helicopter and $969,930 for the U.S. fleet. Removing the placard and revising the existing RFM for your helicopter takes about 0.5 work-hour for an estimated cost of $43 per helicopter and $16,770 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

■ a. Removing Airworthiness Directive (AD) 2020–24–03, Amendment 39–21333 (85 FR 76955, December 1, 2020); and

■ b. Adding the following new AD:

2021–19–09 Airbus Helicopters: Amendment 39–21727; Docket No. FAA–2021–0559; Project Identifier MCAI–2021–00079–R.

(a) Effective Date

This airworthiness directive (AD) is effective November 4, 2021.

(b) Affected ADs

This AD replaces AD 2020–24–03, Amendment 39–21333 (85 FR 76955, December 1, 2020) (AD 2020–24–03).

(c) Applicability

This AD applies to Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350D, AS355E, AS355F, AS355F1, and AS355F2 helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0023, dated January 19, 2021 (EASA AD 2021–0023).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the development of a modification of the electrical wiring of the hoist control on the DUNLOP cyclic stick grip. The FAA is issuing this AD to prevent inadvertent activation of the rescue hoist cable cutter and consequent detachment of an external load or person from the helicopter hoist. This condition could result in personal injury or injury to persons on the ground.

(f) Compliance

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

(g) Requirements

(1) For helicopters with DUNLOP cyclic stick grip manufacturer part number AC66444 with UP/DOWN switches for rescue

hoist control installed, before each hoist operation after December 16, 2020 (the effective date of AD 2020–24–03), accomplish a ground test of the UP/DOWN switches for proper function. If there is any uncommanded hoist action, before further flight, remove the DUNLOP cyclic stick grip from service. Accomplishing the modification in paragraph (2) of EASA AD 2021–0023 constitutes terminating action for the requirements of this paragraph.

(2) 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 2021–0023.

(h) Exceptions to EASA AD 2021–0023

(1) Where EASA AD 2021–0023 refers to October 8, 2020 (the effective date of EASA Emergency AD 2020–0217–E, dated October 6, 2020 (EASA AD 2020–0217–E)), this AD requires using the effective date of this AD.

(2) Where the service information referenced in paragraph (1) of EASA AD 2021–0023 specifies that the ''work must be performed on the helicopter by the operator,'' this AD requires that the work be accomplished by a mechanic that meets the requirements of 14 CFR part 65 subpart D.

(3) Where EASA AD 2021–0023 refers to its effective date, this AD requires using the effective date of this AD.

(4) Where EASA AD 2021–0023 refers to flight hours (FH), this AD requires using hours time-in-service.

(5) Where the service information referenced in EASA AD 2021–0023 specifies to discard certain placards and Flight Manual pages (that were required by EASA AD 2020–0217–E), this AD requires removing them.

(6) Where paragraph (3) of EASA AD 2021–0023 specifies to ''inform all flight crews and, thereafter, operate the helicopter accordingly,'' this AD does not require those actions.

(7) Where paragraph (4) of EASA AD 2021–0023 allows modifying a Group 2 helicopter into a Group 1 helicopter, this AD also requires accomplishing the requirements of paragraph (g)(1) of this AD.

(8) The ''Remarks'' section of EASA AD 2021–0023 does not apply to this AD.

(i) No Reporting Requirement

Where the service information referenced in EASA AD 2021–0023 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Daniel Poblete, Aerospace Engineer, Systems & Equipment Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5335; email *daniel.d.poblete@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0023, dated January 19, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0023, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0559.

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

Issued on September 7, 2021.

Ross Landes,

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

[FR Doc. 2021–21117 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0212; Project Identifier 2018–CE–032–AD; Amendment 39–21715; AD 2021–18–14]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all DG Flugzeugbau GmbH Models DG–808C and DG–1000T gliders. 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 MCAI identifies the unsafe condition as damaged fuel hoses due to environmental and fatigue deterioration. This AD requires inspecting the polyurethane (PU) fuel hoses, replacing the PU fuel hoses if there is damage, and establishing a life limit for the PU fuel hoses. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 4, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 4, 2021.

ADDRESSES: For service information identified in this final rule, contact DG Flugzeugbau GmbH, Otto-Lilienthal Weg 2, D–76646 Bruchsal, Germany; phone: +49 (0)7251 3202–0; email: *info@dg-flugzeugbau.de*; website: *https://www.dg-flugzeugbau.de/*. 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–2021–0212.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0212; 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 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: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@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 DG Flugzeugbau GmbH Models DG–808C and DG–1000T gliders. The NPRM published in the **Federal Register** on July 1, 2021 (86 FR 35027). The NPRM was prompted by MCAI originated by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA has issued EASA AD 2018–0127, dated June 11, 2018 (referred to after this as ''the MCAI''), to address an unsafe condition on DG Flugzeugbau GmbH Models DG–808C and DG–1000T gliders. The MCAI states:

> An occurrence was reported where, during accomplishment of a 10 years inspection on a DG–808C powered sailplane, a damaged (broken) PU [polyurethane] fuel hose was found. The result of subsequent investigation indicated that the damage mode has features of environmental and fatigue deterioration. Additionally, it was determined that similar PU fuel hoses are also installed on other powered sailplane types of the same manufacturer.
>
> This condition, if not detected and corrected, could lead to reduced or interrupted fuel supply to the engine, consequent loss of the available power or fire, possibly resulting in reduced control of the powered sailplane.
>
> To address this potential unsafe condition, DG-Flugzeugbau GmbH issued the applicable TN [Technical Note], providing instructions to inspect the affected parts and replace these with serviceable parts. Additionally, service life limits were established for those serviceable parts.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections of the affected parts. This [EASA] AD also requires replacement of the affected parts with serviceable parts and introduces life limits for serviceable parts.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0212.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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 reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed DG Flugzeugbau GmbH Technical Note No. 800/46, Doc. No. TM800–46 FE–29–01 (English version), Issue 01.a, dated March 7, 2018, for Model DG–808C gliders; and Technical Note No. 1000/38, Doc. No. TM1000–38 FE–29–01 (English version), Issue 01.a, dated February 15, 2018, for Model DG–1000T gliders. The service information, as applicable to the appropriate model glider, specifies inspections of the PU fuel hoses, replacement of the PU fuel hoses if damage is found during an inspection, and actions to take when the hoses have reached their life limit. 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**.

Differences Between This AD and the MCAI

The MCAI requires replacing any damaged fuel hoses before next engine operation, while this AD requires replacing damaged fuel hoses before further flight. Even though use of the engine is optional and the glider can operate without the engine, the glider has other electronic equipment installed that could cause arcing and result in an in-flight fire if there is a fuel leak.

Costs of Compliance

The FAA estimates that this AD affects 10 gliders of U.S. registry. The FAA also estimates that inspecting the fuel hoses will take about 2 work-hours. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators to be $1,700, or $170 per glider, each inspection cycle.

In addition, the FAA estimates that each replacement required by this AD would take about 8 work-hours and require parts costing $500. Based on these figures, the FAA estimates the replacement cost of this AD to be $1,180 per glider.

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:

2021–18–14 DG Flugzeugbau GmbH: Amendment 39–21715; Docket No. FAA–2021–0212; Project Identifier 2018–CE–032–AD.

(a) Effective Date

This airworthiness directive (AD) is effective November 4, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to DG Flugzeugbau GmbH Models DG–808C and DG–1000T gliders, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2800, Aircraft Fuel System.

(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 MCAI describes the unsafe condition as damaged polyurethane (PU) fuel hoses due to environmental and fatigue deterioration. The FAA is issuing this AD to prevent reduced or interrupted fuel supply to the engine or fuel leakage. The unsafe condition, if not addressed, could result in loss of engine power or in-flight fire.

(f) Definitions

(1) For purposes of this AD, an ''affected part'' is a PU fuel hose installed in an airframe fuel system or engine compartment that:

(i) Does not meet industrial standard DIN 73379–2A, or

(ii) Does not meet ISO 7840–A1 without metal shielding.

(2) For purposes of this AD, a ''serviceable part'' is a PU fuel hose installed in an airframe fuel system or engine compartment that:

(i) Meets industrial standard DIN 73379–2A, or

(ii) Meets industrial standard ISO 7840–A1 without metal shielding.

(g) Inspections for Gliders With An Affected Part Installed

Within the next 30 days after the effective date of this AD and thereafter at intervals not to exceed 12 months, visually inspect each affected part for fissures, kinks, and leaks. For this inspection, the ignition switch must be turned on to run the electric fuel pump to demonstrate an operating fuel pressure.

(1) If a fissure, kink, or leak is found on an affected part during any inspection required by the introductory language to paragraph (g) of this AD, before further flight: Replace all affected parts with unused (zero hours time-in-service (TIS)) serviceable parts by following paragraphs 3 and 4 of the Instructions in DG Flugzeugbau GmbH Technical Note No. 800/46, Doc. No. TM800–46 FE–29–01 (English version) Issue 01.a, dated March 7, 2018 (TN No. 800/46), or paragraphs 3 through 5 of the Instructions in DG Flugzeugbau GmbH Technical Note No. 1000/38, Doc. No. TM1000–38 FE–29–01 (English version) Issue 01.a, dated February 15, 2018 (TN No. 1000/38), as applicable to your model glider.

(2) If no fissures, kinks, and leaks are found on all affected parts during any inspection required by the introductory language to paragraph (g) of this AD, before each affected part accumulates 6 years since first installation on a glider or within 6 months after the effective date of this AD, whichever occurs later: Replace all affected parts with unused (zero hours TIS) serviceable parts by following paragraphs 3 and 4 of the Instructions in TN No. 800/46 or paragraphs 3 through 5 of the Instructions in TN No. 1000/38, as applicable to your model glider. If the date of first installation on a glider is unknown for any affected hose, replace all affected hoses within 6 months after the effective date of this AD.

(h) Inspections for Gliders With Only Serviceable Parts Installed

(1) Before or upon accumulating 6 years since first installation on a glider and thereafter at intervals not to exceed 12 months, visually inspect each serviceable part for fissures, kinks, and leaks. For this inspection, the ignition switch must be turned on to run the electric fuel pump to demonstrate an operating fuel pressure.

(2) If a fissure, a kink, or a leak is found during any inspection required by paragraph (h)(1) of this AD, before further flight, replace the part with an unused (zero hours TIS) serviceable part by following paragraphs 3 and 4 of the Instructions in TN No. 800/46 or paragraphs 3 through 5 of the Instructions in TN No. 1000/38, as applicable to your model glider.

(i) Life Limit

Before accumulating 10 years since first installation on a glider and thereafter at intervals not to exceed 10 years, remove each serviceable part from service and replace with an unused (zero hours TIS) serviceable part by following paragraphs 3 and 4 of the Instructions in TN No. 800/46 or paragraphs 3 through 5 of the Instructions in TN No. 1000/38, as applicable to your model glider.

(j) Parts Installation Prohibition

As of the effective date of this AD, do not install an affected part on any glider.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, 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.

(l) Related Information

(1) For more information about this AD contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*.

(2) Refer to European Aviation Safety Agency (EASA) AD 2018–0127, dated June 11, 2018, for more information. You may examine the EASA AD in the AD docket on the website at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0212.

(m) Material Incorporated by Reference

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

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

(i) DG Flugzeugbau GmbH Technical Note No. 800/46, Doc. No. TM800–46 FE–29–01 (English version), Issue 01.a, dated March 7, 2018.

(ii) DG Flugzeugbau GmbH Technical Note No. 1000/38, Doc. No. TM1000–38 FE–29–01 (English version), Issue 01.a, dated February 15, 2018.

(3) For service information identified in this AD, contact DG Flugzeugbau GmbH, Otto-Lilienthal Weg 2, D–76646 Bruchsal, Germany; phone: +49 (0)7251 3202–0; email: *info@dg-flugzeugbau.de*; website: *https://www.dg-flugzeugbau.de/*.

(4) You may view this service information at 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.

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

Issued on August 26, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–21095 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0574; Project Identifier 2019–SW–073–AD; Amendment 39–21725; AD 2021–19–07]

RIN 2120–AA64

Airworthiness Directives; Hélicoptères Guimbal Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain

Hélicoptères Guimbal Model CABRI G2 helicopters. This AD was prompted by a report that, during scheduled maintenance on two helicopters, cracks were found on a certain main rotor (MR) non-rotating scissor link. This AD requires replacing an affected MR non-rotating scissor link with a serviceable part. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 4, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of November 4, 2021.

ADDRESSES: For service information identified in this final rule, contact Hélicoptères Guimbal, 1070, rue du Lieutenant Parayre, Aérodrome d'Aix-en-Provence, 13290 Les Milles, France; telephone 33–04–42–39–10–88; email *support@guimbal.com;* or at *https://www.guimbal.com.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. Service information that is incorporated by reference is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0574.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0574; 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: Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Hélicoptères Guimbal Model CABRI G2 helicopters. The NPRM published in the **Federal Register** on July 23, 2021 (86 FR 38943). In the NPRM, the FAA proposed to require replacing an affected MR non-rotating scissor link with a serviceable part. The NPRM was prompted by EASA AD 2019–0186, dated July 30, 2019 (EASA AD 2019–0186), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for certain Hélicoptères Guimbal Model CABRI G2 helicopters. EASA advises that, during scheduled maintenance on two helicopters, cracks were found on the MR non-rotating scissor link, part number (P/N) G41–10–200. The suspected root cause for the cracking is corrosion due to stress induced by the mounting of the metal bushings inside the lug hole. To address this issue the manufacturer modified the design of the MR non-rotating scissor link to reinforce the lugs and replace the metal bushings with plastic bushings. Cracking of a MR non-rotating scissor link, if not addressed, could result in failure of that scissor link, resulting in reduced control of the helicopter.

Accordingly, EASA AD 2019–0186 requires replacement of affected MR non-rotating scissor links with serviceable parts.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Guimbal Service Bulletin SB 15–015, Revision C, dated August 27, 2019. This service information specifies procedures for, among other actions, modifying the helicopter by replacing the MR nonrotating scissor link, P/N G41–10–200, with a serviceable part, P/N G41–10–201 (by installing scissor link assembly, P/N G41–12–100, which includes MR non-rotating scissor link, P/N G41–10–201) and torqueing the bolts. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA also reviewed Guimbal Service Bulletin SB 15–015, Revision A, dated July 20, 2015 (SB 15–015, Revision A); and SB 15–015, Revision B, dated July 12, 2019 (SB 15–015, Revision B). SB 15–015, Revision A, describes procedures for replacing a MR non-rotating scissor link, P/N G41–10–200, with P/N G41–12–100, which has a new, improved design. SB 15–015, Revision B, describes the same procedures as SB 15–015, Revision A, and includes a revised compliance time, an updated Situation section, and added an action.

Costs of Compliance

The FAA estimates that this AD affects 32 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	1 work-hour × $85 per hour = $85	$323	$408	$13,056

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:

2021–19–07 Hélicoptères Guimbal: Amendment 39–21725; Docket No. FAA–2021–0574; Project Identifier 2019–SW–073–AD.

(a) Effective Date

This airworthiness directive (AD) is effective November 4, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Hélicoptères Guimbal Model CABRI G2 helicopters, certificated in any category, with main rotor (MR) non-rotating scissor links, part number (P/N) G41–10–200 installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6700, Rotorcraft Flight Control.

(e) Unsafe Condition

This AD was prompted by a report that during scheduled maintenance on two helicopters, cracks were found on the MR non-rotating scissor link with P/N G41–10–200. The FAA is issuing this AD to address cracking of a MR non-rotating scissor link. Cracking of a MR non-rotating scissor link, if not addressed, could result in failure of that scissor link, resulting in reduced control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 50 hours time-in-service or 2 months after the effective date of this AD, whichever occurs first, modify the helicopter by replacing the MR non-rotating scissor link, P/N G41–10–200, with a serviceable scissor link assembly, P/N G41–12–100, in accordance with the Required Actions, IPC 4.1–2 (a) through (d) inclusive, of Guimbal Service Bulletin SB 15–015, Revision C, dated August 27, 2019.

(2) As of the effective date of this AD, do not install a MR non-rotating scissor link, P/N G41–10–200, on any helicopter.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (h)(1) or (2) of this AD.

(1) Guimbal Service Bulletin SB 15–015, Revision A, dated July 20, 2015.

(2) Guimbal Service Bulletin SB 15–015, Revision B, dated July 12, 2019.

(i) Special Flight Permits

Special flight permits, as described in 14 CFR 21.197 and 21.199, are prohibited.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.*

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

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2019–0186, dated July 30, 2019. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2021–0574.

(l) Material Incorporated by Reference

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

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

(i) Guimbal Service Bulletin SB 15–015, Revision C, dated August 27, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Hélicoptères Guimbal, 1070, rue du Lieutenant Parayre, Aérodrome d'Aix-en-Provence, 13290 Les Milles, France; telephone 33–04–42–39–10–88; email *support@guimbal.com;* or at *https://www.guimbal.com.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on September 1, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–21116 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0517; Airspace Docket No. 21–ACE–15]

RIN 2120–AA66

Amendment of Class E Airspace; Newton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Newton-City-County Airport, Newton, KS. This action is the result of an airspace review caused by the decommissioning of the Newton non-directional beacon (NDB). The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, December 2, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 38245; July 20, 2021) for Docket No. FAA–2021–0517 to amend the Class E airspace at Newton-City-County Airport, Newton, KS. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71:

Amends the Class E surface airspace at Newton-City-County Airport, Newton, KS by removing the Newton NDB and associated extensions from the airspace legal description;

And amends the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (reduced from a 6.8-mile) radius of Newton-City-County Airport; removes the Newton NDB and associated extension from the airspace legal description; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is due to an airspace review caused by the decommissioning of the Newton NDB which provided navigation information for the instrument procedures this airport.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA JO Order 7400.11F,

Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designates as Surface Areas.

* * * * *

ACE KS E2 Newton, KS [Amended]

Newton-City-County Airport, KS
(Lat. 38°03′26″ N, long. 97°16′31″ W)

Within a 4.2-mile radius of Newton-City-County Airport.

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

* * * * *

ACE KS E5 Newton, KS [Amended]

Newton-City-County Airport, KS
(Lat. 38°03′26″ N, long. 97°16′31″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Newton-City-County Airport.

Issued in Fort Worth, Texas, on September 27, 2021.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–21245 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0555; Airspace Docket No. 21–ACE–16]

RIN 2120–AA66

Amendment of Class E Airspace; Salem, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Salem Memorial Airport, Salem, MO. This action is the result of an airspace review caused by the decommissioning of the Maples very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program.

DATES: Effective 0901 UTC, December 2, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 38954; July 23, 2021) for Docket No. FAA–2021–0555 to amend Class E airspace extending upward from 700 feet above the surface at Salem Memorial Airport, Salem, MO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the at Salem Memorial Airport, Salem, MO, by removing the Maples VORTAC and associated extension from the airspace legal description.

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

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action

is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

ACE MO E5 Salem, MO [Amended]

Salem Memorial Airport, MO
(Lat. 37°36′55″ N, long. 91°36′16″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Salem Memorial Airport.

Issued in Fort Worth, Texas, on September 27, 2021.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–21246 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 11537]

RIN 1400–AF36

International Traffic in Arms Regulations: Temporary Update to Republic of Cyprus (Cyprus) Country Policy; Extension of Effective Period

AGENCY: Department of State.

ACTION: Temporary final rule; extension of effective period.

SUMMARY: The Department of State is extending the effective period of the International Traffic in Arms Regulations (ITAR) temporary modification to allow the temporary removal of prohibitions on exports, reexports, retransfers, and temporary imports of non-lethal defense articles and defense services destined for or originating in the Republic of Cyprus (Cyprus) through September 30, 2022, unless modified.

DATES: Effective September 30, 2021, the expiration date of the temporary final rule published on September 28, 2020 (85 FR 60698), is extended through September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2809, or email *deccspmddtc@midatl.service-now.com*. ATTN: Regulatory Change, ITAR Section 126.1 Cyprus Country Policy Update.

SUPPLEMENTARY INFORMATION: Section 1250A(d) of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92) and § 205(d) of the Eastern Mediterranean Security and Energy Act (Div. J. Pub. L. 116–94) (hereinafter ''the Acts'') provide that the policy of denial for exports, reexports, or transfers of defense articles on the United States Munitions List (USML) to Cyprus shall remain in place unless the President determines and certifies to the appropriate Congressional Committees not less than annually that: (A) Cyprus is continuing to cooperate with the U.S. Government in anti-money laundering reforms; and (B) Cyprus has taken the steps necessary to deny Russian military vessels access to ports for refueling and servicing. These provisions further provide that the President may waive these limitations for one fiscal year if the President determines that it is essential to the national security interests of the United States to do so.

On April 14, 2020, the President delegated to the Secretary of State the functions and authorities vested in the President by the Acts (85 FR 35797). On May 28, 2021, the Secretary of State, exercising this delegated authority, determined that it was essential to the national security interest of the United States to waive the limitations on non-lethal defense articles and defense services destined for or originating in Cyprus. On September 28, 2020, the Department of State published a temporary rule (RIN 1400–AF14) in the **Federal Register**, amending the ITAR to update defense trade policy toward the Republic of Cyprus by temporarily removing prohibitions on exports, reexports, retransfers, and temporary imports of non-lethal defense articles and defense services destined for or originating in Cyprus. This rule was effective on October 1, 2020, and expires on September 30, 2021.

On May 28, 2021, again utilizing these delegated functions and authorities, the Secretary of State determined that it is essential to the national security interest of the United States to maintain the temporary removal of restrictions on the export, reexport, retransfer, and temporary import of non-lethal defense articles and defense services destined for or originating in Cyprus. This determination requires the Department to extend the effective period of the temporarily modified text of ITAR § 126.1(r), which specifies the circumstances provided in the Acts in which the policy of denial for exports, reexports, retransfers, and temporary import of non-lethal defense articles and defense services destined for or originating in the Republic of Cyprus will not apply.

Extension

The expiration date of the temporary final rule will remain in effect through September 30, 2022, unless modified.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a military or foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Since this temporary rule is exempt from 5 U.S.C. 553, the provisions of § 553(d) do not apply to this rulemaking. Therefore, this temporary rule is effective upon publication.

Regulatory Flexibility Act

Since this temporary rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will 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

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

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

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Because the scope of this temporary rule implements a governmental policy increasing defense trade with a country, and does not impose additional regulatory requirements or obligations on the public, the Department believes costs associated with this temporary rule will be minimal. The Department also finds that any costs of this rulemaking do not outweigh the foreign policy benefits, as described in the preamble. This rule has been designated non-significant by the Office of Information and Regulatory Affairs under Executive Order 12866 Sec. 3(d)(2).

Executive Order 12988

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

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

Paperwork Reduction Act

This temporary rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Bonnie D. Jenkins,

Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. 2021–21255 Filed 9–29–21; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1206 and 1241

[Docket No. ONRR–2020–0001; DS63644000 DRT000000.CH7000 212D1113RT]

RIN 1012–AA27

ONRR 2020 Valuation Reform and Civil Penalty Rule: Final Withdrawal Rule

AGENCY: Office of Natural Resources Revenue (''ONRR''), Interior.

ACTION: Final rule; withdrawal.

SUMMARY: ONRR is withdrawing the ONRR 2020 Valuation Reform and Civil Penalty Rule (''2020 Rule'').

DATES: As of November 1, 2021, ONRR's 2020 Rule, published in the **Federal Register** on January 15, 2021 at 86 FR 4612, currently effective November 1, 2021 (as extended at 86 FR 9286 and 86 FR 20032), is withdrawn.

FOR FURTHER INFORMATION CONTACT: For questions, contact Luis Aguilar, Regulatory Specialist, Appeals & Regulations, ONRR, by email at *ONRR_RegulationsMailbox@onrr.gov,* or by telephone (303) 231–3418.

SUPPLEMENTARY INFORMATION:

TABLE OF ABBREVIATIONS AND COMMONLY USED ACRONYMS IN THIS RULE

Abbreviation	What it means
2016 Valuation Rule	Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Rule, 81 FR 43338 (July 1, 2016).
2016 Civil Penalty Rule	Amendments to Civil Penalty Regulations, 81 FR 50306 (August 1, 2016).
2017 Repeal Rule	Repeal of Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform, 82 FR 36934 (August 7, 2017).
2020 Rule	ONRR 2020 Valuation Reform and Civil Penalty Rule, 86 FR 4612 (January 15, 2021).
ALJ	Administrative Law Judge.
APA	Administrative Procedure Act of 1946, as amended, 5 U.S.C. 551, *et seq.*
BLM	Bureau of Land Management.
BLS	Bureau of Labor Statistics.
BOEM	Bureau of Ocean Energy Management.
BSEE	Bureau of Safety and Environmental Enforcement.
Deepwater Policy	MMS' May 20, 1999, memorandum entitled ''Guidance for Determining Transportation Allowances for Production from Leases in Water Depths Greater Than 200 Meters''.
DOI	U.S. Department of the Interior.
E.O.	Executive Order.
FERC	Federal Energy Regulatory Commission.
First Delay Rule	ONRR 2020 Valuation Reform and Civil Penalty Rule: Delay of Effective Date; Request for Public Comment, 86 FR 9286 (February 12, 2021).
FOGRMA	Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701, *et seq.*
MLA	Mineral Leasing Act of 1920, 30 U.S.C. 181, *et seq.*
MMS	Minerals Management Service.
NEPA	National Environmental Policy Act of 1970, as amended, 42 U.S.C. 4321, *et seq.*

TABLE OF ABBREVIATIONS AND COMMONLY USED ACRONYMS IN THIS RULE—Continued

Abbreviation	What it means
NGL	Natural Gas Liquids.
OCS	Outer Continental Shelf.
OCSLA	Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331, *et seq.*
OMB	Office of Management and Budget.
ONRR	Office of Natural Resources Revenue.
Proposed 2020 Rule	ONRR 2020 Valuation Reform and Civil Penalty Rule (a proposed rule), 85 FR 62054 (October 1, 2020).
Proposed Withdrawal Rule	ONRR 2020 Valuation Reform and Civil Penalty Rule: Notification of Proposed Withdrawal, 86 FR 31196 (June 11, 2021).
Second Delay Rule	ONRR 2020 Valuation Reform and Civil Penalty Rule: Delay of Effective Date, 86 FR 20032 (April 16, 2021).
Secretary	Secretary of the Department of the Interior.
S.O.	Secretarial Order.

I. Introduction

The 2020 Rule, as published, amends a number of provisions adopted by ONRR in the 2016 Valuation Rule and the 2016 Civil Penalty Rule relating to the valuation of oil and gas produced from Federal leases for royalty purposes; the valuation of coal produced from Federal and Indian leases for royalty purposes; and the assessment of civil penalties. 86 FR 4612. The 2020 Rule amended the following portions of ONRR's valuation regulations that were adopted via the 2016 Valuation Rule in the following ways:

1. Deepwater gathering—codifies the principles of the Deepwater Policy to allow certain gathering costs to be deducted as part of a lessee's transportation allowance for Federal oil and gas produced on the OCS at depths greater than 200 meters.

2. Extraordinary processing allowances—reinstates a lessee's ability to apply for approval to claim an extraordinary processing allowance for Federal gas in situations where the gas stream, plant design, and/or unit costs are extraordinary, unusual, or unconventional relative to standard industry conditions and practice.

3. Index to be used in index-based valuation option—lowers the applicable index from the highest bidweek price to the average bidweek price.

4. Percentage deduction allowable for transportation in index-based valuation option—increases the percentage reduction to index stated in the 2016 Valuation Rule to reflect an average of more recently reported transportation cost data.

5. Arm's-length valuation option—extends the index-based valuation option (previously allowed in non-arm's-length sales) to arm's-length Federal gas sales.

6. Default provision—eliminates the default provision and references thereto from the Federal oil and gas and Federal and Indian coal regulations, which provision established criteria explaining how ONRR would exercise the Secretary's authority to establish royalty value when typical valuation methods are unavailable, unreliable, or unworkable.

7. Misconduct—eliminates the definition of ''misconduct.''

8. Signed contracts—eliminates the requirement that a lessee have contracts signed by all parties.

9. Citation to legal precedent—eliminates the requirement to cite legal precedent when seeking a valuation determination.

10. Valuation of coal based on electricity sales—eliminates the requirement to value certain Federal and Indian coal based on the sales price of electricity.

11. Coal cooperative—removes the definition of ''coal cooperative'' and the method to value sales between members of a ''coal cooperative'' for Federal and Indian coal.

12. Non-substantive corrections—amends various regulations by making non-substantive corrections.

The 2020 Rule amended the following provisions of ONRR's civil penalty regulations that were adopted in the 2016 Civil Penalty Rule in the following ways:

1. Facts considered in assessing penalties for payment violations—specifies that ONRR considers unpaid, underpaid, or late payment amounts in the severity analysis for payment violations.

2. Consideration of aggravating and mitigating circumstances—specifies that ONRR may consider aggravating and mitigating circumstances when calculating the amount of a civil penalty.

3. Conforming civil penalty regulations to a court decision—eliminates 30 CFR 1241.11(b)(5), which permitted an ALJ to vacate a previously-granted stay of an accrual of penalties if the ALJ later determined that a violator's defense to a notice of noncompliance or assessment of civil penalties was frivolous.

The 2020 Rule has not, however, gone into effect. *See* 86 FR 9286 and 86 FR 20032.

The Proposed Withdrawal Rule described the procedural history of ONRR's publication of the Proposed 2020 Rule, the 2020 Rule, the First Delay Rule, and the Second Delay Rule. *See* 86 FR 31197–31198. ONRR published the Proposed 2020 Rule on October 1, 2020. On January 15, 2021, ONRR published the 2020 Rule. The effective date of the 2020 Rule was originally February 16, 2021.

On January 20, 2021, two memoranda were issued, one by the Assistant to the President and Chief of Staff and one by OMB, which directed agencies to consider a delay of the effective date of rules published in the **Federal Register** that had not yet become effective and to invite public comment on issues of fact, law, and policy raised by those rules. 86 FR 7424.

On February 12, 2021, ONRR published the First Delay Rule which delayed the effective date of the 2020 Rule by 60 days and opened a 30-day comment period on the facts, law, and policy underpinning the 2020 Rule as well as on the impact of a delay in the effective date of the 2020 Rule. After the close of the First Delay Rule's comment period, ONRR determined that a second delay of the 2020 Rule's effective date was needed. Thus, on April 16, 2021, ONRR published a second final rule which further delayed the effective date until November 1, 2021.

ONRR published the Proposed Withdrawal Rule on June 11, 2021. The Proposed Withdrawal Rule invited comment on a complete withdrawal of the 2020 Rule as well as potential alternatives. *See* 86 FR 31215. The Proposed Withdrawal Rule also requested comments pertaining to the substance or merits of the 2020 Rule and the regulatory scheme it replaced. *Id.*

In response to the Proposed Withdrawal Rule, ONRR received ten comment submissions and 151 pages of new comment materials from oil, gas,

and coal trade associations and representatives, public interest groups, and State entities. After consideration of the public comment and further analysis by the agency, ONRR publishes this final rule pursuant to the authority delegated to it. *See* 30 U.S.C. 189 (MLA); 30 U.S.C. 1751 (FOGRMA); 43 U.S.C. 1334 (OCSLA); *See* S.O. 3299, sec. 5; and S.O. 3306, sec. 3–4.

II. Rationale for Withdrawal of the 2020 Rule

After completing a review of the regulatory history and the public comment submissions received, ONRR determined that the defects discussed below require withdrawal of the 2020 Rule. These defects necessitating withdrawal of the 2020 Rule include, among others, (1) an inadequate comment period, (2) absence of discussion of alternatives, (3) lack of reasoned explanations for many of the amendments proposed in that rule, (4) inadequate justification for changes in recently adopted policies reflected in the 2016 Valuation Rule, and (5) flawed economic analysis. ONRR continues to consider and evaluate whether some of the provisions in the now withdrawn 2020 Rule should be adopted in the future. ONRR anticipates re-proposing some of these provisions, particularly ones to amend the 2016 Civil Penalty Rule, in the near future. If ONRR does so, it will avoid the defects that permeated the rulemaking process that resulted in the 2020 Rule and which necessitate the withdrawal of that Rule. Thus, DOI has determined to withdraw the 2020 Rule and to begin any new rulemaking in a manner that avoids the defects described herein.

A. Inadequate Comment Period

Several years ago, ONRR amended the 30 CFR part 1206 regulations when it adopted the 2016 Valuation Rule. *See* 81 FR 43338. Though the 2016 Valuation Rule followed a public comment period of 120 days, the 2020 Rule followed a 60-day public comment period. In litigation construing ONRR's adoption of the 2017 Repeal Rule, the United States District Court for the Northern District of California found that ONRR did not provide meaningful opportunity for comment when it repealed the 2016 Valuation Rule without a comment period of commensurate length to the 2016 Valuation Rule's public comment period. *California* v. *U.S. Dep't of the Interior,* 381 F. Supp. 3d 1153, 1177–78 (N.D. Cal. 2019). Specifically, the District Court found that the 30-day comment period used for the 2017 repeal of the 2016 Valuation Rule was too brief when ONRR had a much longer comment period for the adoption of the 2016 Valuation Rule—approximately 120 days. *Id.*

While *California* is a decision by a tribunal of inferior jurisdiction and not binding on litigants who did not appear in that case, ONRR was a party to the case. Because ONRR did not appeal the *California* case, it is bound by the decision in a manner not applicable to other Federal agencies and bureaus. Here, though ONRR allowed for more than 30 days of comment on the 2020 Rule, ONRR provided a 60-day comment period on the Proposed 2020 Rule when the 2016 Valuation Rule was adopted after a 120-day comment period. ONRR needed to provide the public with more than a 60-day comment period for review and comment on the 2020 Rule even though some of the amendments may be less complex or controversial than others because the public needed time to consider the lengthy rulemaking history dating back to the 2016 Valuation Rule and how the amendments interrelate. ONRR's decision to combine various oil, gas, and coal valuation amendments with civil penalty amendments into one rulemaking, when previously it had addressed many of these topics in separate rulemakings in the 2016 Valuation Rule and 2016 Civil Penalty Rule, further added to the necessary review and comment time. Thus, ONRR must withdraw the 2020 Rule.

Public Comment: A commenter stated that the 2020 Rule did not rescind the entire 2016 Valuation Rule or fully reinstate the prior regulations.

ONRR Response: The 2020 Rule, while not fully repealing the 2016 Valuation Rule, repealed nearly all the revenue-impacting provisions adopted in the 2016 Valuation Rule. Thus, the 2020 Rule is fairly considered a targeted repeal of many of the substantive, revenue-impacting provisions of the 2016 Valuation Rule. Because ONRR is uniquely bound by *California* and most of the amendments have a lengthy, complex rulemaking history, ONRR should have provided the public with a comment period of commensurate length with respect to its targeted repeal of the substantive provisions of the 2016 Valuation Rule as was employed when those provisions were adopted in the 2016 Valuation Rule. This is especially the case since ONRR combined valuation and civil penalty amendments together in the 2020 Rule.

Public Comment: Multiple commenters stated that the public had sufficient notice and opportunity to comment on the 2020 Rule. The commenters stated that the Proposed Withdrawal Rule failed to acknowledge that the Proposed 2020 Rule was available on ONRR's website for almost two months prior to its publication in the **Federal Register**. The commenters stated that, with the additional time factored in, the public had approximately 115 days to comment on the 2020 Rule, similar to the 120-day comment period provided for the 2016 Valuation Rule.

ONRR Response: There is no legal authority supporting a conclusion that publication on ONRR's website can be substituted, in whole or in part, for the notice required under the APA. *See* 5 U.S.C. 553(b) (stating that, with only limited exceptions not applicable here, ''notice of proposed rulemaking shall be published in the **Federal Register**''). Moreover, there is no demonstration that the general public was perusing ONRR's website for advance notice of a proposed rule instead of relying on the traditional and statutorily-authorized method of notice in the **Federal Register**. In addition, the public was unable to submit comments for ONRR's review during the 55 days the draft was available only on ONRR's website. The comment period for the 2020 Rule did not open until its publication in the **Federal Register** and was only open for a 60-day period. Therefore, the commenters' assertions do not adequately consider the notice and comment requirements under the APA. *See* 5 U.S.C. 553(b); *see also California,* 381 F. Supp. at 1177 (finding legal deficiencies in a comment period for ONRR's withdrawal rule that was substantially shorter than the comment period employed when ONRR adopted the rule).

B. No Discussion of Alternatives

The Proposed 2020 Rule did not demonstrate that ONRR considered alternatives to the repeal of the provisions adopted via the 2016 Valuation Rule or the provisions adopted via the 2016 Civil Penalty Rule. Although the Proposed 2020 Rule solicited comment on alternatives, that alone was not sufficient since ONRR had to comply with the requirements of the *California* case. According to *California,* ONRR needed to discuss alternatives when adopting the 2020 Rule because, as discussed herein, ONRR was attempting, through the 2020 Rule, to repeal most of the substantive provisions adopted in 2016. *California,* 381 F. Supp. 3d at 1168–69. The 2020 Rule should have discussed alternatives. For example, ONRR should have discussed alternatives to the substantive, revenue impacting provisions instead of simply reversing course and reinstating a deepwater

gathering policy (which had been overturned by the 2016 Valuation Rule), reinstating extraordinary processing allowances (which had been repealed by the 2016 Valuation Rule), and making changes to the index-based pricing options (which had been discussed but rejected in the 2016 Valuation Rule). Likewise, instead of merely repealing the default provision, the definition of misconduct, the requirement for signatures on contracts, and the requirement to cite legal precedent in requests for valuation determinations, ONRR should have discussed other alternatives which could have included further amendment of the existing provisions or amendments to related provisions.

These shortcomings resemble ONRR's 2017 attempt to repeal the 2016 Valuation Rule, where the United States District Court for the Northern District of California found that ONRR did not discuss alternatives to a full repeal of the 2016 Valuation Rule and explained that an agency must discuss alternatives even if the agency is repealing less than an entire rulemaking. *See California,* 381 F. Supp. 3d at 1168–69; *Yakima Valley Cablevision, Inc.* v. *F.C.C.,* 794 F.2d 737, 746 n. 36 (D.C. Cir. 1986).

With respect to the repeal of the two coal provisions, ONRR notes that the position taken in the 2020 Rule is consistent with, but not identical to, the position taken by the Federal defendants in the *Cloud Peak* case, specifically that the coal cooperative provisions and the provisions providing for valuation of certain coal sales based on electricity are defective. *See Cloud Peak Energy Inc.* v. *U.S. Dep't of the Interior,* 415 F. Supp. 3d 1034 (D. Wyo. 2019). However, on September 8, 2021, the United States District Court for the District of Wyoming issued a ruling on the merits of the Cloud Peak petitions, which ruling renders moot the portions of the 2020 Rule applicable to Federal and Indian coal.

Public Comment: A commenter stated that ONRR's Proposed Withdrawal Rule fails to cite any legal support for its assertion that the APA requires an analysis of the alternatives to a repeal of regulations. The commenter also stated that ONRR failed to quantify the amount of discussion required to meet this standard. The commenter asserted that ONRR's reliance on *California* is unhelpful to its position because, according to the commenter, the case is currently under appeal at the U.S. Court of Appeals for the Ninth Circuit. The commenter also argued that the case law relied upon by ONRR is inapplicable in this instance. More specifically, the commenter stated that the *California* case primarily focused on rule repeals. The commenter further stated that the 2020 Rule did not repeal the entire 2016 Valuation Rule, but instead modified only some of the regulations promulgated through the 2016 Valuation Rule.

Another commenter noted appreciation for the alternatives provided in the Proposed Withdrawal Rule. However, this commenter stated that a full withdrawal of the 2020 Rule is necessary due to the legal and procedural deficiencies underpinning the 2020 Rule.

ONRR Response: As shown in the Proposed 2020 Rule, ONRR cited authority, including *California,* 381 F. Supp. 3d at 1168–69, that supports the requirement that ONRR must discuss alternatives due to the unique factual circumstances of this rule, its attempted repeal of the 2016 Valuation Rule, and the *California* decision. *See also DHS* v. *Regents of the Univ. of Cal.,* 140 S. Ct. 1891, 1913–15 (2020) (discussing the requirement to consider alternatives). In addition, the commenter's statement regarding the status of the *California* litigation is incorrect. *California* is a final decision, binding on ONRR, because no party to that case appealed any of the District Court's decisions, including the final merits decision (dated March 29, 2019).

C. Lack of Reasoned Explanation

The Proposed 2020 Rule did not fully explain why the amendments were being proposed. ONRR needed to provide a reasoned explanation for repealing most of the substantive provisions adopted in 2016 Valuation Rule. The *California* Court noted a similar flaw in ONRR's 2017 proposal to repeal the 2016 Valuation Rule, finding that ONRR did not identify the reasons supporting its proposed repeal. 381 F. Supp. 3d at 1173–74 (''The Court concludes that, by failing to provide the requisite information to adequately apprise the public regarding the reasons the ONRR was seeking to repeal the Valuation Rule in favor of the former regulations it had just replaced, the ONRR effectively precluded interested parties from meaningfully commenting on the proposed repeal. The Court therefore concludes that Federal Defendants violated the APA by failing to comply with the notice and comment requirement.'') (citations omitted). Specifically, ONRR's Proposed 2020 Rule lacked the full statement of the reasons why ONRR was both proposing to return to some of the ''historical practices'' and suggesting other changes that were eventually adopted by the 2020 Rule, most of which targeted the changes adopted in the 2016 Valuation Rule and 2016 Civil Penalty Rule. While the Proposed 2020 Rule identified the proposed changes, discussed the anticipated economic impact of the changes, and set forth the language of the proposed amendments, ONRR did not fully discuss why it was repealing most of the substantive provisions adopted in 2016 Valuation Rule. Cf. 85 FR 62056–62062 with 86 FR 4617–4640. ONRR needed to provide such an explanation in light of the *California* case, the lengthy and complex rulemaking history, and the repeal of most of the substantive provisions adopted in 2016 Valuation Rule. Moreover, for the changes that were reverting to ''historical practices'' (*i.e.,* those existing before the 2016 Valuation Rule was adopted), ONRR did not fully explain why it was reverting to practices it had rejected in its last substantive rulemaking. Thus, the Proposed 2020 Rule did not provide sufficient notice of the reasons for the 2020 Rule. As such, the public was deprived of a meaningful opportunity to comment.

Public Comment: A commenter stated that frequent rule changes create confusion and unnecessary cost within the regulated community.

ONRR Response: While ONRR understands there may be confusion caused by the recent change in requirements due to the successive adoption of the 2016 Valuation Rule, publication of the 2020 Rule, and now this withdrawal, ONRR notes that the 2020 Rule has never gone into effect and no company has ever been required to report thereunder. ONRR also notes that the 2016 Valuation Rule has been in effect for a relatively short period of time. Withdrawing the 2020 Rule will avoid additional rule changes until such time as the public has had adequate opportunity to review and comment on any proposed amendments and ONRR has considered the associated costs of any changes to the regulated community.

Public Comment: Some commenters agreed with ONRR's analysis in the Proposed Withdrawal Rule, agreeing that the 2020 Rule lacked evidentiary support and a reasoned justification for the rulemaking.

ONRR Response: ONRR agrees. For the reasons stated in the Proposed Withdrawal Rule and herein, the withdrawal of the 2020 Rule is appropriate.

D. Inadequate Justification for Change in Recently Adopted Policy

At the time the Proposed 2020 Rule was published, the 2016 Valuation Rule was in force only from March 29, 2019,

when the repeal of the 2016 Valuation Rule was overturned, to October 1, 2020, and full compliance with the 2016 Valuation Rule was delayed by the series of Dear Reporter letters to October 1, 2020. Given that the Proposed 2020 Rule was, in many instances, an attempt to return to the valuation rules that existed prior to the 2016 Valuation Rule, ONRR should have included justifications for the proposed changes in the Proposed 2020 Rule to allow for public comment thereon. In addition, ONRR should have explained the inconsistencies between the 2016 Valuation Rule and the amendments described in the Proposed 2020 Rule and adequately explained its potential rejection of the position under which the agency and the regulated public had been operating for only a brief period of time. *California,* 381 F. Supp. 3d at 1173–74.

For example, the 2016 Valuation Rule discussed, but rejected, extending the index-based valuation option to arm's-length sales of gas. 81 FR 43347. The 2020 Rule did not adequately explain its change in position to adopt a provision rejected in the 2016 Valuation Rule. Similarly, the 2016 Valuation Rule rejected the request to use average bidweek prices for the index-based valuation option. *Id.* When it was published, the 2020 Rule took the position that the average bidweek price should be used but failed to explain why the change in position was warranted after being rejected by the 2016 Valuation Rule. Additionally, the 2016 Valuation Rule established that any movement of bulk production from the wellhead to a platform offshore is gathering and not transportation and effectively rescinded the Deepwater Policy. *See* 81 FR 43340. The 2020 Rule, however, allowed a lessee producing in waters deeper than 200 meters to deduct the costs incurred in gathering to be deducted as part of its transportation allowance. 86 FR 4613, 4622–4624. The 2020 Rule did not explain why ONRR was adopting a position so recently rejected in the 2016 Valuation Rule.

Because ONRR failed to explain, in the Proposed 2020 Rule, its reasons for changing rules adopted in 2016 and only belatedly did so in the 2020 Rule, the 2020 Rule is defective under the APA. *See California,* 381 F. Supp. 3d at 1166–68.

E. The 2020 Rule's Economic Analysis Is Flawed

As discussed in the Economic Analysis of this Final Rule, the economic analyses set forth in the Proposed 2020 Rule and the 2020 Rule were flawed. *See* Section V, *infra.* The numerous flaws in the economic analysis in the Proposed 2020 Rule and the 2020 Rule could have a direct impact on the changes made relative to the transportation allowances allowed under 30 CFR 1206.141(c)(1)(iv) and 1206.142(d)(1)(iv) if a lessee elects optional index-based reporting. Accordingly, the 2020 Rule should be withdrawn in order to allow ONRR to propose changes to its valuation rules that are based on sound economic analysis.

F. Comments Regarding the Support Needed for a Full Withdrawal

Public Comment: Multiple commenters stated that the Proposed Withdrawal Rule does not justify a full withdrawal of the 2020 Rule. According to the commenters, the Proposed Withdrawal Rule did not provide ONRR's rationale for the withdrawal of the 2020 Rule's revenue-neutral amendments, such as the default provision, coal valuation, and civil penalties amendments. One commenter suggested that ONRR provide another opportunity for notice and comment before proceeding with a full withdrawal.

ONRR Response: ONRR has considered the commenters' statements and disagrees. Upon careful review, the defects of the 2020 Rule, including the lack of adequate comment period (Section II.A), the inadequate discussion of alternatives (Section II.B), the lack of reasoned explanation (Section II.C), and the inadequate justification for change in recently adopted policy (Section II.D) necessitate the withdrawal of the rule. As stated above, ONRR has the present intention to open a new rulemaking process with respect to some provisions that were adopted in the 2020 Rule.

III. Additional Reasons for the Withdrawal of Certain Amendments

Citing now-withdrawn E.O.s and S.O.s, the 2020 Rule adopted the deepwater gathering allowance, extraordinary processing allowance, and amendments to index-based valuation for Federal oil and gas production (''revenue-impacting amendments'') to incentivize oil and gas production. 86 FR 4614–4615. ONRR is withdrawing these revenue-impacting amendments for the reasons identified in Section II above and the additional reasons set forth in this section.

A. Unwarranted and Overbroad Attempt To Incentivize Production

ONRR was formed when the Secretary reorganized the former MMS into BOEM, BSEE, and ONRR. *See* S.O. 3299 (Aug. 29, 2011). This reorganization was to ''improve the management, oversight, and accountability of activities on the [OCS]; ensure a fair return to the taxpayer from royalty and revenue collection and disbursement activities; and provide independent safety and environmental oversight and enforcement of offshore activities.'' *Id.* at Sec. 1. As part of this reorganization, ONRR assumed the royalty and revenue management functions of MMS, ''including, but not limited to, royalty and revenue collection, distribution, auditing and compliance, investigation and enforcement, and asset management for both onshore and offshore activities . . . .'' *Id.* at Sec. 5. Consistent with these responsibilities, ONRR promulgated detailed regulations governing mineral royalty reporting, valuation, auditing, collection, and disbursement. *See* 30 CFR Chapter XII.

BLM, BOEM, and BSEE, on the other hand, are primarily responsible for mineral leasing functions, such as awarding leases, setting royalty rates, and granting royalty relief when appropriate. 86 FR 31201. This royalty relief authority originates in the MLA and OCSLA. For onshore leases, the MLA authorizes the Secretary to ''reduce the royalty on an entire leasehold . . . whenever in his judgment it is necessary to do so in order to promote development, or . . . the leases cannot be successfully operated under the terms provided therein.'' 30 U.S.C. 209. For offshore leases, OCSLA authorizes the Secretary to ''reduce or eliminate any royalty'' to ''promote increased production on the lease area.'' 43 U.S.C. 1337(a)(3). To implement the Secretary's royalty relief authority, BLM and BSEE promulgated regulations requiring detailed technical and economic information for each lease or lease area for which royalty relief is sought. *See* 30 CFR part 203; 76 FR 64432, 64435 (Oct. 18, 2011) (for offshore leases, stating that ''BSEE is responsible for the regulatory oversight of need-based royalty relief awarded after lease issuance and the tracking of all royalty-free production.''); 43 CFR 3103.4–1(b)(1) (for onshore leases, requiring that an operator file a relief application with the appropriate BLM office for BLM's consideration).

ONRR departed from its traditional role in the DOI in seeking to incentivize other oil and gas development and production through the revenue-impacting amendments. *See* 86 FR 31200. This was unwarranted because BLM, BOEM, and BSEE have primary authority, experience, and expertise to determine when royalty relief is needed for individual leases or lease areas to promote development or increase

production. *Id.* at 31201. These entities review and consider royalty relief applications and can grant targeted royalty relief where needed. *See, e.g., Special Case Royalty Relief, https://www.bsee.gov/what-we-do/conservation/gulf-of-mexico-deepwater-province/special-case-royalty-relief-overview.* The 2020 Rule's revenue-impacting amendments, in contrast, are overbroad because those amendments apply to all leases, including highly profitable leases and lease areas that are being produced or will be developed and produced even without the incentives contained in the 2020 Rule. *Id.* This global reduction of royalties on profitable oil and gas production for the purpose of incentivizing other development and production undermines and conflicts with the royalty rate setting and royalty relief functions of BLM, BSEE, and BOEM and exceeds ONRR's expertise and area of delegated authorities.

Although the 2020 Rule cited certain E.O.s and S.O.s as a basis for incentivizing production, these E.O.s and S.O.s, before they were revoked, expressly required that they be implemented consistent with applicable law. *See, e.g.,* E.O. 13783, Sec. 8(b). As discussed above, the MLA and OCSLA, and BOEM and BSEE's regulations, authorize targeted royalty relief for a lease or lease area. The revenue-impacting amendments are inconsistent with this targeted royalty relief because these amendments apply to all production, including production in highly profitable areas. Further, the E.O.s and S.O.s upon which the 2020 Rule was premised were revoked prior to the effective date of the 2020 Rule. *See* E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, Sec. 7 (Jan. 20, 2021) (revoking E.O.s 13783 and 13795); E.O. 13992, Revocation of Certain Executive Orders Concerning Federal Regulation, Sec. 2 (Jan. 20, 2021) (revoking E.O. 13892); and S.O. 3398, Sec. 4 (Apr. 16, 2021) (revoking S.O.s 3350 and 3360). Thus, the global incentivization of production exceeded ONRR's delegated authority and should not have been cited as a basis for the 2020 Rule. 86 FR 31200.

Further, regardless of whether ONRR has a role to play in the DOI in incentivizing oil and gas production, ONRR still would withdraw the amendments because there is insufficient basis to conclude that the amendments would maintain or incentivize oil and gas production in the United States above levels that would occur in their absence. 86 FR 31201. Many factors, such as oil and gas prices, national and international supply, market forecasts, alternative energy sources, credit markets, and competition, play a role in decisions on oil and gas development and production. The 2020 Rule fails to cite an economic study or contain an economic analysis demonstrating that the amendments would incentivize higher levels of oil and gas production from Federal lands. Nor does the 2020 Rule demonstrate that the royalties paid on any additional oil and gas production will offset the reduction in royalties attributable to the deepwater gathering allowance, extraordinary processing allowance, and amendments to the index-based valuation option contained in the 2020 Rule.

Public Comment: A commenter stated that ONRR departed from its primary accounting and auditing role in seeking to incentivize development and production. This commenter pointed to the long-held policy that gathering costs are considered costs of placing gas into marketable condition. This commenter supports withdrawal of the allowance to restore taxpayer protections, uphold valuation standards, and prevent the loss of hundreds of millions of dollars in royalty revenue over the next decade.

ONRR Response: ONRR acted outside of its traditional accounting and auditing role in seeking to incentivize oil and gas development and production.

Public Comment: A commenter stated that 2020 Rule was premised in part on a drop in commodity prices, that commodity prices have since recovered, and that commodity prices cannot be a basis for consistent Federal policy.

ONRR Response: In general, it is not advisable for ONRR to amend royalty valuation regulations based on temporary fluctuations in commodity prices. FOGRMA directs the Secretary to maintain a comprehensive inspection, collection, and fiscal and production accounting and auditing system that: (1) Accurately determines mineral royalties, interest, and other payments owed, (2) collects and accounts for such amounts in a timely manner, and (3) disburses the funds collected. *See* 30 U.S.C. 1701 and 1711. ONRR performs these mineral revenue management responsibilities for the Secretary. *See* S.O. 3299. Under its delegated authority, ONRR's function is to ensure fair return (*i.e.,* fair value) for the taxpayer from royalty and revenue collection and disbursement activities. *Id.* It has no statutory mandate or delegated authority to change its valuation regulations to account for fluctuations in commodity prices. The valuation regulations already account for changes in commodity prices because valuation often is based on the prices received for the mineral production, and in instances when the price received is lower, the dollar amount of the royalty obligation is lower. BLM, BOEM, and BSEE have authority to and are better positioned to address temporary drops in commodity prices when needed to incentive oil and gas development or production.

B. Deepwater Gathering Allowance

The 2020 Rule adopted a deepwater gathering allowance for the stated purpose of incentivizing deepwater oil and gas development and production. *See* 86 FR 4654. The allowance mirrors the Deepwater Policy that was expressly overturned by the 2016 Valuation Rule. ONRR is withdrawing the deepwater gathering allowance for the reasons stated in Sections II and III.A, and the additional reasons below.

1. Unwarranted Allowance for Bulk Oil and Gas Production Not Treated or Measured for Royalty Purposes

ONRR is withdrawing the deepwater gathering allowance for the additional reason that the DOI has long required that oil and gas ''be placed into marketable condition at no cost to the Federal lessor'' and ''gathering has consistently been held to be a part of that process.'' *See, e.g., Nexen Petroleum U.S.A., Inc.* v. *Norton,* No. 02–3543, 2004 WL 722435, at *9 (E.D. La. Mar. 31, 2004). Consistent with the marketable condition requirement, ONRR's regulations define gathering as ''movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off of the lease, unit, or communitized area that BLM or BSEE approves for onshore and offshore leases, respectively, including any movement of bulk production from the wellhead to a platform offshore.'' 30 CFR 1206.20. ONRR views the movement of bulk oil and gas production that has not been separated, treated, and measured for royalty purposes as gathering because these processes are integral to placing oil and gas into marketable condition. *See* 53 FR 1190–1191, 1193 (Jan. 15, 1988); *Devon Energy Corp.,* Acting Asst. Sec. Decision, Valuation Determination for Coalbed Methane Production from the Kitty, Spotted Horse, and Rough Draw Fields, Powder River Basin, Wyoming, at 2, 18, 21–22, 32–33 (Oct. 9, 2003) (''Devon Valuation Determination''), *aff'd sub nom., Devon Energy Corp* v. *Norton,* No. 04–CV–0821 (GK), 2007 WL 2422005 (D.D.C. Aug. 23, 2007), *aff'd*

sub nom., Devon Energy Corp. v. *Kempthorne,* 551 F.3d 1030 (D.C. Cir. 2008), *cert. denied,* 558 U.S. 819 (2009); *Nexen,* 2004 WL 722435, at *1, 4–5, 9–12; *Marathon Oil Co.,* MMS–00–0063–OCS (FE), 2005 WL 6733988 (Oct. 20, 2005); *Kerr-McGee Corp.,* 147 IBLA 277 (1999); *CNG Producing Co.* v. *Royalty Valuation & Standards Div.,* MMS–96–0370–0CS, 1997 WL 34843496 (Oct. 16, 1997); *see also DCOR, LLC,* ONRR–17–0074–OCS (FE), 2019 WL 6127405, at *7–15 (Aug. 26, 2019).

Public Comment: Some commenters stated that the deepwater gathering allowance is needed to incentivize deepwater offshore oil and gas production, with one asserting that the deepwater gathering allowance should not be withdrawn because it benefits the United States to receive royalties and share in the costs of subsea transportation rather than forego development altogether. This commenter asserted that the development of offshore resources promotes one of ONRR's primary functions, *i.e.,* to ensure fair return for the public.

ONRR Response: These commenters provided no information demonstrating that the deepwater gathering allowance would result in additional deepwater development or increased production and ONRR has no such information in its possession. If appropriate, BSEE could grant targeted royalty relief for individual leases and lease areas to promote increased development and production when necessary and supported by economic analysis.

Public Comment: While agreeing that gathering is not deductible, some commenters opposed withdrawing the deepwater gathering allowance because they view all subsea movement of oil and gas to a facility not located on a lease or unit adjacent to the lease on which the production originates to be transportation even if the production has not been separated, treated, or measured for royalty purposes. These commenters asserted that ONRR has considered such movement to always be transportation since the Deepwater Policy was issued in 1999. Consistent with this position, one of these commenters objected to referring to the allowance as a ''deepwater gathering allowance'' because that commenter considers such movement to always be transportation.

ONRR Response: The commenters' view that subsea movement of bulk oil and gas production to a facility off the lease or an adjacent lease is always transportation does not comport with ONRR's view that gathering is part of placing oil and gas into marketable condition; oil and gas that has not been separated, treated, and measured for royalty purposes has not been fully gathered and thus is not in marketable condition. Moreover, the commenters' position fails to recognize that the Deepwater Policy was an exception to the then-existing rules. Thus, even the Deepwater Policy acknowledged the movement would traditionally be considered gathering but allowed a lessee to claim such movement as part of its transportation allowance. Notably, the Deepwater Policy was never codified or otherwise made part of ONRR's regulations. It was properly set aside by the 2016 Valuation Rule because it was not a published rule and because it was inconsistent with published rules. As a result, the 2016 Valuation Rule clearly established, consistent with the language of the pre-existing regulations, that gathering does not end until oil and gas is separated, treated, and measured for royalty purposes.

Public Comment: A commenter supported the deepwater gathering allowance and claimed that industry relied on the Deepwater Policy between 1999 and 2016 when making financial investments and leasing and development decisions. This commenter suggested that retroactively eliminating the allowance would present legal vulnerabilities (stating that it was unlawful for ONRR to eliminate the deepwater gathering allowance considering that a lessee relied on it to make leasing and development decisions) and may disincentivize future investment and development on the OCS.

ONRR Response: The United States District Court for the District of Wyoming recently upheld ONRR's decision to rescind the deepwater gathering policy in litigation filed to challenge the 2016 Valuation Rule. *See Cloud Peak Energy, Inc.* v. *Dep't of the Interior,* Case No. 2:19–cv–00120–SWS, Order Upholding In Part And Reversing In Part 2016 Valuation Rule (D. Wyo. Sept. 8, 2021). Noting that ONRR ''acknowledged and considered'' reliance interests, the District Court stated that ''ONRR considered the relevant information and articulated a rational basis based on the relevant information for its decision to vacate the Deep Water Policy.'' *Id.* at 15. The District Court concluded that ''Petitioners have not established that ONRR acted arbitrarily or capriciously, abused its discretion, or exceed[ed] its lawful authority by rescinding the Deep Water Policy.'' *Id.*

Notably, the referenced reliance comment was general and not supported by discussion of specific leases or evidentiary materials. The commenter presented no evidence and did not explain how any specific investment was, in fact, premised on the future receipt of a relatively small allowance for gathering. Such general, unsubstantiated, and unquantified reliance interests do not outweigh the other interests and policy considerations that support withdrawal of the deepwater gathering allowance. 81 FR 43340.

An agency must comply with the APA to either promulgate new legally binding regulations or to substantively amend or modify existing regulations. The reasonableness of a lessee's reliance on an informal memorandum that directly contradicted the language of properly adopted rules is questionable. *See, e.g., Glycine & More, Inc.,* v. *United States,* 880 F.3d 1335 (Fed. Cir. 2018). Even if the Deepwater Policy were found to qualify as a legally binding rule, standard OCS lease language illustrates that the reasonableness of expecting it to exist in perpetuity is also questionable. *See* Form BOEM–2005, § 1 (Feb. 2017) (''It is expressly understood that amendments to existing statutes and regulations . . . as well as the enactment of new statutes and promulgation of new regulations, which do not explicitly conflict with an express provision of this lease may be made and that the Lessee bears the risk that such may increase or decrease the Lessee's obligations under the lease.''). Moreover, to the extent any OCS lease contains terms consistent with the Deepwater Policy, those leases will continue to control regardless of any conflict with the valuation regulations. *See* 30 CFR 1206.100(d) and 1206.140(c); Form BOEM–2005, § 1 (Feb. 2017).

Public Comment: A commenter supporting the 2020 Rule's deepwater gathering allowance asserted that ONRR's elimination of the Deepwater Policy in the 2016 Valuation Rule violated both contract law and the APA. The commenter pointed to a term in Section 6(c) of the Form BOEM–2005 (Feb. 2017) OCS lease template. The commenter also cited *Kerr-McGee Corp.,* 22 IBLA 124 (1975) to suggest that royalties to the Federal government should be the same regardless of whether it is paid in volume or value.

ONRR Response: Section 6(c) of the Form BOEM–2005 (Feb. 2017) OCS lease template is expressly limited to royalties paid in amount (*i.e.,* in kind), not in value: ''When paid in amount, such royalties shall be delivered at pipeline connections or in tanks provided by the Lessee. Such deliveries

shall be made at reasonable times and intervals and, at the Lessor's option, shall be effected either (i) on or immediately adjacent to the leased area, without cost to the Lessor, or (ii) at a more convenient point closer to shore or on shore, in which event the Lessee shall be entitled to reimbursement for the reasonable cost of transporting the royalty production to such delivery point.'' The Secretary phased out the DOI's royalty-in-kind program starting in 2009. *See* 75 FR 15725. Moreover, lease terms govern if the lease terms are inconsistent with any of the valuation regulations. *See* 30 CFR 1206.100(d) and 1206.140(c). Thus, withdrawal of the deepwater gathering allowance would have no impact on the referenced lease term in the unique situation suggested by the commenter.

In addition, the commenter's reliance on *Kerr-McGee Corp.,* 22 IBLA 124 (1975) is misplaced. *Kerr-McGee* was decided under the historic concept of ''field'' gathering and is devoid of any traditional contract law analysis. When the concept of ''field'' gathering was replaced in 1988 by the adoption of regulations containing a definition of gathering, that rulemaking also affected previously existing precedents that discussed the concept of ''field'' gathering. 53 FR 1184, 1193 (Jan. 15, 1988) (rejecting recommendations to ''limit gathering to the lease or unit area so a transportation allowance may be obtained for all off-lease movement''); 53 FR 1230, 1240 (Jan. 15, 1988) (same); Devon Valuation Determination, at 18 (explaining how the regulatory definitions of gathering may impact precedents applying the historic concept of ''field'' gathering). As a result, the line between gathering and transportation may not be the same for royalties paid in amount and royalties paid in value. *Compare* Form BOEM–2005, § 6 (Feb. 2017) *and* 30 CFR 1206.20, 1206.110, and 1206.152.

Additionally, the commenter's statement that the elimination of the Deepwater Policy violated the APA is not supported by explanation or analysis. MMS' royalty and revenue management functions were transferred to ONRR in 2010. *See* 76 FR 64432 (Oct. 18, 2011). At that time, ONRR became responsible for MMS' regulations governing gathering and transportation. ONRR subsequently determined that the Deepwater Policy was inconsistent with the regulatory definitions of gathering and Departmental decisions interpreting that term. *See* 85 FR 62054, 62059 (Oct. 1, 2020); 80 FR 608, 624 (Jan. 6, 2015). Consequently, it rescinded the Deepwater Policy in the 2016 Valuation Rule. *See id.* This final rule affects the 2020 Rule, not any provision of the 2016 Valuation Rule.

2. Missing Regulatory Text

While the Proposed 2020 Rule's preamble explained ONRR's intention to adopt a deepwater gathering allowance in 30 CFR 1206.110 (oil) and 1206.152 (gas), consistent with the former Deepwater Policy, key components and criteria for a deepwater gathering allowance were omitted from the proposed regulation text. For oil, the Proposed 2020 Rule omitted language later added by the 2020 Rule that expanded the proposed allowance from oil produced in waters deeper than 200 meters to oil produced from a lease or unit any part of which lies in waters deeper than 200 meters. Cf. 85 FR 62080 with 86 FR 4654. The Proposed 2020 Rule further omitted other key requirements of the Deepwater Policy, including that the movement is not to a facility that is located on a lease or unit adjacent to the lease or unit on which the production originates, that the movement is beyond a central accumulation point, defined to include a single well, a subsea manifold, the last well in a group of wells connected in a series, or a platform extending above the surface of the water, and that the gathering costs are only those allocable to the royalty-bearing oil. *Id.* For gas, the Proposed 2020 Rule completely omitted the deepwater gathering allowance in the proposed regulation text for § 1206.152. *See* 85 FR 4656.

Because ONRR made significant, substantive additions to the §§ 1206.110(a) and 1206.152(a) without reopening the comment period, the public had inadequate opportunity to review and comment on the substantially revised regulatory text prior to publication of the 2020 Rule. Accordingly, the adoption of a deepwater gathering allowance in the 2020 Rule was defective because ONRR did not give the public adequate notice of the intended regulatory language and the scope of the allowance.

Public Comment: A commenter stated that ONRR revealed, in the preamble to the Proposed 2020 Rule, an intention to revert back to the Deepwater Policy and that any prospective commenter could review the Deepwater Policy. This commenter noted that several commenters pointed out the error in the text language in response to the Proposed 2020 Rule, suggesting that interested entities had access to information sufficient to formulate meaningful comments.

ONRR Response: ONRR disagrees. The Deepwater Policy was not adopted through any recognized form of rulemaking. The proposed regulation text was not included in the Proposed 2020 Rule, despite a general discussion appearing in the Proposed 2020 Rule's preamble. Moreover, the absence of the regulation text created a high likelihood of confusion regarding the precise parameters of the allowance being proposed. Moreover, because the meaning of unambiguous regulatory text is not changed by conflicting preamble language, some commenters may have reviewed and commented on the proposed regulatory text without reading the preamble and its general discussion. Because much of the intended regulatory text was missing from the Proposed 2020 Rule, including key provisions relating to deepwater allowances, the public was not provided with adequate notice and an opportunity to comment.

3. Procedural Defects Specific to the Deepwater Gathering Provision

Prior to adopting the deepwater gathering allowance, ONRR was required to offer a rationale for the adoption of the amendment in order to allow interested parties a meaningful opportunity to comment. *See* Sections II.C and II.D. As its basis for the deepwater gathering allowance, the Proposed 2020 Rule stated that a lessee may be unable (without great costs, impaired engineering efficiency, or both) to satisfy ONRR's gathering definition before production reaches the platform due to unique environmental and operational factors in deepwater. 85 FR 62060. While this may be true for some deepwater leases, the 2020 Rule does not explain why these unique factors justify a deepwater gathering allowance that is applicable to all deepwater leases. Many locations, both onshore and offshore, have unique environmental and operational factors. The burdens placed on a lessee by the environment in which it operates are matters considered at the time the lease is issued, and reflected in the amount of bonus bids and, in some cases, the royalty rate. *See* 53 FR 1205 (Jan. 15, 1988). Thus, environmental and operational factors alone are inadequate justifications for a deepwater gathering allowance.

The 2020 Rule added new rationale for the deepwater gathering allowance. For example, the 2020 Rule stated that the Gulf of Mexico is currently viewed as a mature hydrocarbon province; that most of the acreage available for leasing has received multiple seismic surveys, has been offered for lease a number of times, or is under lease; that many of the remaining reserves are located in smaller fields that do not warrant stand-

alone development and are unlikely to be developed absent subsea completions with tiebacks to existing platforms; that companies will consider not only the oil and gas potential of an area, but also the expected costs of development, as compared to alternative investments; and that the expected profitability of specific projects will be affected by a company's determinations of geologic and economic risk. 86 FR 4623.

However, the 2020 Rule cited no economic studies or research supporting this new rationale. It also did not explain why these facts, if true, justify a deepwater gathering allowance on all deepwater leases. Where gathering ends and transportation begins should not, for example, depend on whether a hydrocarbon reserve is mature. The maturity of a hydrocarbon reserve may be a factor that BLM, BSEE, or BOEM takes into consideration in setting royalty rates or granting royalty relief, but it is not a factor relevant to the determination as to where gathering ends. Finally, regardless of whether this new rationale might have been a legitimate basis for the deepwater gathering allowance, the public did not have a meaningful opportunity to comment on it because it was not stated in the 2020 Proposed Rule.

C. Extraordinary Processing Allowance

ONRR's valuation regulations allow a lessee to deduct the reasonable and actual costs incurred in processing gas. 30 CFR 1206.159(a)(1). A lessee cannot claim the processing allowance against the value of the residue gas. 30 CFR 1206.159(c)(1). Instead, it must allocate its processing costs among the other gas plant products, with NGLs being a single product. 30 CFR 1206.159(b). Additionally, the allowance cannot exceed 66⅔ percent of the value of the gas plant product against which the allowance is taken. 30 CFR 1206.159(c)(2).

Prior to the 2016 Valuation Rule, ONRR could, upon request of a lessee, authorize a lessee to exceed the 66⅔ percent cap. 53 FR 1281. Upon request of a lessee, ONRR could also authorize a lessee to claim an allowance for extraordinary processing costs actually incurred. *Id.* To qualify for an extraordinary processing allowance, a lessee's request had to demonstrate that the costs were, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional. *Id.*

The 2016 Valuation Rule eliminated ONRR's authority to allow a lessee to exceed the 66⅔ percent cap and to take an extraordinary processing allowance. 81 FR 43353. The 2016 Valuation Rule also terminated any extraordinary processing allowances that ONRR previously approved. *Id.* At the time, there were two extraordinary processing allowances approved by ONRR for gas processed at two facilities in Wyoming. *Id.*

The 2020 Rule reinstated a lessee's ability to request to claim an extraordinary processing allowance but not its ability to request to exceed the 66⅔ percent cap. 86 FR 4625–4626. The reinstatement of extraordinary processing allowances was justified as a way for ONRR to incentivize production or remove a disincentive to production having such costs. *Id.*

ONRR is withdrawing the extraordinary processing allowance amendment for the reasons stated in Sections II and III.A., and for the additional reasons below.

1. Unwarranted, Overbroad, and Unsupported Incentivization of Production

As discussed in Section III.A, ONRR's attempt to incentivize production through the adoption of the 2020 Rule, including through its reinstatement of a lessee's ability to apply for and receive an extraordinary processing allowance, is unwarranted. ONRR notes that no supporter of the 2020 Rule submitted a report or study demonstrating that the reinstatement of the extraordinary processing allowance would increase development or production. Moreover, this amendment is overbroad because it could potentially apply in areas where production is already profitable. Other DOI bureaus have programs in place to incentivize development or production where necessary. *See* Section III.A and 86 FR 31201–31202.

Public Comment: Some commenters asserted that the extraordinary processing allowance encourages continued and future production of unique hydrocarbon streams and the production of gas in atypical areas. Commenters also suggested that a few lessees may have relied on the historical extraordinary processing allowance approvals relating to the two processing facilities in Wyoming, and made investment decisions based on those then-existing approvals. These commenters opined that, absent the extraordinary processing allowances, the viability of lease operations associated with the two Wyoming facilities is questionable. Finally, some commenters stated that the extraordinary processing allowances are necessary to maximize hydrocarbon recovery, prevent waste due to premature lease abandonment, and provide a mechanism to reduce royalty payments when costs exceed profits.

ONRR Response: Although commenters assert that extraordinary processing allowances are needed to incentivize future production and ensure the viability of certain lease operations, no commenter provided support to show that, without the extraordinary processing allowances, a lessee would curtail production, or that ONRR's reinstatement of extraordinary processing allowances would increase gas production, including from leases serviced at the two Wyoming facilities. Notably, the preamble to the 2020 Rule recognized that the production impact of the rule's amendments, including the extraordinary processing amendment, is ''negligible or marginal.'' 86 FR 4616. Further, the historical rarity of submissions and approvals of applications for extraordinary processing allowances suggests that extraordinary processing allowances do not incentivize production to the degree commenters assert. In the almost 30 years an extraordinary processing allowance could have been sought, fewer than ten applications were submitted and only two were approved, neither of which was approved after 1996. To the extent that potential waste, premature lease abandonment, or production profitability are legitimate concerns, other bureaus within the DOI may have programs designed to address those issues.

Public Comment: A commenter asserted that the extraordinary processing allowance is needed to increase helium production because helium is critical for national security.

ONRR Response: ONRR's gas valuation regulations do not apply to helium. *See Exxon Corp.,* 118 IBLA 221, 229 n.9 (1991) (noting that MMS does not consider helium in valuing a gas stream for royalty purposes because ''it is not a leasable mineral''). Rather, helium production from Federal lands is administered by BLM and governed by the Helium Stewardship Act of 2013, codified at 50 U.S.C. 167–167q, and BLM regulations, 43 CFR part 16. *See also https://www.blm.gov/programs/energy-and-minerals/helium/division-of-helium-resources* (noting that BLM's Division of Helium Resources ''adjudicates, collects, and audits monies for helium extracted from Federal lands''). Thus, any responsibility to incentivize helium production lies with BLM, not ONRR.

The 2020 Rule stated that ''allowing a lessee to apply for an extraordinary processing allowance approval for the natural gas portion of [its] production stream, may lower natural gas

production costs and incentivize new or continued production of helium.'' 86 FR 4628. But as noted in Section III.A above, ONRR lacks evidence to substantiate that an extraordinary processing allowance will incentivize gas production, and more particular to this discussion, lacks evidence that an extraordinary processing allowance is likely to boost helium production. Moreover, of the two prior extraordinary processing allowances that ONRR approved, only one impacted a helium-bearing gas stream. Likewise, none of the public comments contain any support for the proposition that reinstating the extraordinary processing allowance will result in additional helium production from this stream. Thus, even if the United States has ''important economic and national security interests in ensuring the continuation of a reliable supply of helium''—as noted in the 2020 Rule and referenced in the public comment—the extraordinary processing allowance has not been shown to be an effective means to increase helium production. *Id.*

Finally, DOI recently implemented other statutory shifts that encourage investment in helium production, but which were not mentioned in the 2020 Rule or by the commenter. The Dingell Act, Public Law 116–9, Section 1109, ''Maintenance of Federal Mineral Leases Based on Extraction of Helium,'' amended the MLA on March 12, 2019, to allow the production of helium to maintain a Federal oil and gas lease beyond its primary term. *See* 30 U.S.C. 181 (''extraction of helium from gas produced from such lands shall maintain the lease as if the extracted helium were oil and gas''). Prior to this amendment, the initial ten-year lease term could only be extended if oil or gas, not helium, was produced in paying quantities. A consequence of the prior MLA framework was that revenue from the sale of helium was not factored into whether a well was producing in ''paying quantities'' and thus qualified for an extension of the initial lease term beyond ten years. The shift away from considering only the production of oil and natural gas as holding the lease seems likely to encourage investment in helium production. The targeted amendment to the MLA negates any contention that the modest relief potentially available through an extraordinary processing allowance is effective to encourage helium production.

2. ONRR's Authority To Modify Processing Allowance Regulations

Public Comment: A commenter suggested that withdrawing ONRR's authority to permit extraordinary processing allowances would improperly inflate royalties due because a lessee cannot deduct its reasonable, actual gas processing costs as allowed under the gas valuation rules. The commenter further noted that the Proposed Withdrawal Rule does not question whether the previously approved extraordinary processing allowances comprised reasonable, actual processing costs for qualifying operations.

ONRR Response: ONRR agrees that the gas valuation rules permit a lessee to deduct most reasonable and actual gas processing costs. 30 CFR 1206.159(a)(1). But gas processing allowances have never been without limits. Rather, the mineral leasing statutes recognize ONRR's authority to create and subsequently modify regulations, including those related to processing allowances. *See, e.g.,* 30 U.S.C. 189 (authorizing the Secretary, under the MLA, to ''prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter''); 43 U.S.C. 1334(a) (authorizing the Secretary to ''prescribe such rules and regulations as may be necessary to carry out'' the provisions of OCSLA); 30 U.S.C. 1751(a) (authorizing the Secretary, under FOGRMA, to ''prescribe such rules and regulations as he deems reasonably necessary to carry out this chapter'').

The MLA, OCSLA, and FOGRMA do not define ''royalty value.'' None of those statutes mention processing costs, let alone mandate adoption of regulations allowing a deduction for processing costs. Instead, the agency-developed regulations at 30 CFR part 1206 to authorize processing allowances. The agency established the deductions by regulation and is authorized to change the regulations, as it did here. In *Cloud Peak Energy Inc.* v. *U.S. Dep't of the Interior,* 415 F. Supp. 3d 1034, 1046 (D. Wyo. 2019), the United States District Court for the District of Wyoming commented on the ''wide latitude of discretion'' ONRR has to enact ''rules and regulations enabling [the DOI] to complete the tasks it [is] assigned.'' This discretion would necessarily include the ability to change allowances adopted by regulation. *Id.* at 17, 24, 29; *see also Am. Trucking Ass'ns* v. *Atchison, Topeka, & Santa Fe Ry. Co.,* 387 U.S. 397, 416 (1967) (stating that ''[r]egulatory agencies do not establish rules of conduct to last forever''); *FCC* v. *Fox Television Stations,* 556 U.S. 502, 515 (2009) (recognizing agency authority to change regulatory course).

Public Comment: A commenter asserted that the extraordinary processing allowance prevented receipt of fair market value for minerals extracted from Federal land and should be withdrawn.

ONRR Response: ONRR is withdrawing the extraordinary processing allowance for the reasons discussed herein, consistent with the comment.

3. Additional Administrative Burden and Reduced Royalties

The 2020 Rule states that ''ONRR anticipates . . . it will again receive very few requests and will rarely grant approval under this provision, as was the case when the language was in place between March 1, 1988, and December 31, 2016.'' 86 FR 4628. Consistent with this, a commenter asserts that ONRR will not be impacted if it reinstates its authority to approve extraordinary processing allowances because ONRR maintains control of the approval process and is not required to grant all requests. Notably, however, when ONRR drafted the 2020 Rule, no consideration was given to the potential interplay between the reinstatement of ONRR's authority to permit extraordinary processing allowances and the retention of the hard cap on processing allowances, which could impact the number of extraordinary processing allowance applications submitted.

Prior to the adoption of the 2016 Valuation Rule, a lessee could apply, under specified circumstances, for an extraordinary processing allowance and to exceed the soft cap of 66⅔ percent on processing allowances. The 2016 Valuation Rule eliminated extraordinary processing allowances and changed the soft cap to a hard cap (*i.e.,* a firm limit on the processing allowance cap). *See* 30 CFR 1206.159(c)(2). The Proposed 2020 Rule proposed to reinstate both the extraordinary processing allowance and soft caps. 85 FR 62058.

Between the publication of the Proposed 2020 Rule and the publication of the 2020 Rule, ONRR performed a new economic analysis. Based thereon, the 2020 Rule reinstated ONRR's authority to permit extraordinary processing allowances but did not restore a lessee's ability to seek to exceed the cap on processing allowances. 86 FR 4625. Thus, under the 2020 Rule, an extraordinary processing allowance application is the only mechanism by which a lessee can request to exceed limits on processing allowances, a circumstance that might cause ONRR to receive more applications for approval of an

extraordinary processing allowance than it did historically. ONRR did not consider this possibility or the effect on royalty payments that might result if additional extraordinary processing allowance requests are submitted and approved.

Public Comment: Some commenters stated that ONRR will not be impacted if it reinstates its authority to approve extraordinary processing allowances because ONRR maintains control of the approval process and is not required to grant all requests.

ONRR Response: While the comments regarding the broad discretion of the approval process are generally valid, the comments are not sufficiently specific for ONRR to act on. Moreover, reinstatement of ONRR's authority to permit extraordinary processing allowances may create the unintended and unanticipated consequences discussed above. ONRR must analyze those circumstances before it could permit the extraordinary processing allowance to go into effect.

4. Procedural Defects Specific to the Extraordinary Processing Allowances

The Proposed 2020 Rule failed to provide a reasoned explanation, or adequate justification for the change, as required under the APA to provide sufficient notice to the public of the reasons for the reinstatement of the extraordinary processing allowance. *See* Sections II.C and II.D.

First, ONRR published the Proposed 2020 Rule on October 1, 2020. At that time, the 2016 Valuation Rule was reinstated for only eighteen months, but lessees had not yet been required to comply with the rule. Thus, ONRR had, at most, a limited opportunity to assess the impact of the withdrawal of its authority to permit extraordinary processing allowances.

Second, in the Proposed 2020 Rule, the amendment was premised on the notion of incentivizing production. *See* 85 FR 62058. However, the 2020 Rule contained inconsistent positions on incentivization. In response to public comments, the 2020 Rule stated that it was ''not premised on increasing production of oil, gas or coal by some measured amount'' and instead was ''meant to incentivize both the conservation of natural resources . . . and domestic energy production over foreign energy production.'' 86 FR 4616. The 2020 Rule also stated that the anticipated impact of the rule's amendments on production would be ''negligible.'' 86 FR 4626. The 2020 Rule similarly stated that, in most cases, allowing a lessee to exceed the processing allowance cap would not be sufficient to incentivize production. *See* 86 FR 4626–4629 (noting a lessee's greater royalty share of production negates any incentive to continue producing from a Federal lease under suboptimal circumstances). Further, neither the Proposed 2020 Rule nor the 2020 Rule explained the purported connection between the extraordinary processing allowance and increased production.

Finally, the public was not provided a meaningful opportunity to comment on the rationale that ultimately formed the basis for the reinstatement of the extraordinary processing allowance because it was not set forth in the Proposed 2020 Rule. Apart from an unpersuasive argument about incentivizing production, ONRR relied entirely on reasons submitted in response to the Proposed 2020 Rule to support its reinstatement of the extraordinary processing allowance. *See* 86 FR 31204 (identifying five additional justifications in the 2020 Rule for reinstatement of the extraordinary processing allowance, each of which was based on comments submitted in response to the Proposed 2020 Rule). Therefore, the public did not have an opportunity to comment on most of the reasons contained in the 2020 Rule to justify the reinstatement of the extraordinary processing allowance.

D. Index Prices

1. Unwarranted Change From Highest Bidweek Price to Average Bidweek Price

For the first time, the 2016 Valuation Rule allowed a lessee to calculate the royalty value of its production by using an index-based valuation formula for its non-arm's-length sales of Federal gas, instead of actual sales prices, transportation costs, and processing costs. 30 CFR 1206.141(c) and 1206.142(d). This index-based valuation method is required if there is an index pricing point and the lessee has no written contract for the sale of the gas or there is no sale of the gas, which is the case for approximately 0.3 percent of all Federal gas. 30 CFR 1206.141(e) and 1206.142(f). The index-based valuation formula is otherwise optional. 30 CFR 1206.141(c) and 1206.142(d).

Under the 2016 Valuation Rule, a lessee electing to use the index-based valuation formula must report and pay royalties based on the highest bidweek price for the index pricing points to which the gas could flow, reduced by an amount intended to account for average transportation costs. 30 CFR 1206.141(c)(1) and 1206.142(d)(1). The 2016 Valuation Rule considered and rejected comments that using the highest bidweek price results in an inflated value for royalty purposes, which is neither reasonable nor justified. 81 FR 43347. ONRR disagreed with those comments, stating that the ''provision protects the interests of the Federal lessor, while also simplifying the royalty reporting process for industry.'' *Id.*

The 2020 Rule amended the index-based valuation formula by substituting the average bidweek price for the highest bidweek price. 86 FR 4619. The 2020 Rule posited that ''[w]hile the bidweek average price is lower than the bidweek high price, the bidweek average more closely reflects the gross proceeds that a lessee would typically receive in an arm's-length transaction, and therefore is more likely to actually be used by lessees.'' 86 FR 4619–4620. Using an average, however, means that there are transactions where a lessee receives a higher price. And because index-based pricing is optional for all but 0.3 percent of Federal gas, a lessee who generally receives more than the average bidweek price could choose to report and pay based on the average bidweek price in order to reduce its royalty obligations, as could a lessee with lower than average transportation costs.

Conversely, a lessee who generally receives less than the average bidweek price or pays higher than average transportation costs could continue to report and pay royalties based on its actual sales and transaction data specific to the gas at issue rather than the index-based valuation formula. Thus, a lessee could avoid higher royalties by not using the index-based valuation option. 30 CFR 1206.141(c), 1206.142(d). In other words, a lessee would have an increased opportunity to pay royalties on the lower of two values. As a result, changing the formula to reduce the bidweek price used from highest to average is expected to reduce total Federal gas royalties due the United States by $5,062,000 per year, as detailed in the *Economic Analysis,* below.

In adopting the 2020 Rule, ONRR was required to explain why it was rejecting the position it adopted in the 2016 Valuation Rule that the use of the highest bidweek price is necessary to protect the interests of the Federal lessor. *See California,* 381 F. Supp. 3d at 1173–74. Use of the highest bidweek price helps ensure that the United States receives a fair market value, while allowing a lessee the option of a formula if the lessee is motivated to save on administrative costs incident to reporting, payment, and potential audit of actual sales prices, transportation

costs, and processing costs, as well as the cost of any ensuing disputes. For the reasons described in Section II, which discusses various defects in the promulgation of the 2020 Rule, and III.A, which describes ONRR's unwarranted and overbroad attempt to incentivize production, and because the 2020 Rule did not adequately explain why it was shifting to average index prices, ONRR withdraws this provision of the 2020 Rule.

Similarly, the use of the highest bidweek price is consistent with frequently-seen royalty schemes—the lessee is required to pay the lessor on the higher or highest of multiple measures of royalty value to protect against valuation measures that may prove inapplicable or otherwise fail in some instances, and to minimize the impact of any self-dealing or exercise of poor business judgment. *See, e.g.,* Federal and Indian lease and regulation provisions requiring payment based on (a) a major portion price if higher (*see* 30 CFR 1206.54 and 1206.174(a)(4) and 47 FR 47774 (Oct. 27, 1982)), (b) the value of gas as unprocessed gas if higher than the value of gas as processed gas (30 CFR 1206.176 and 52 FR 1257 (Jan. 15, 1988)), and (c) no less than gross proceeds (30 CFR 1206.174(g) and 53 FR 1275 (Jan. 15, 1988))*; see also,* Competitive Oil and Gas Lease, State of Alaska, Department of Natural Resources, Sec. 36(a), *https://dog.dnr.alaska.gov/Documents/Leasing/SaleDocuments/AKPeninsula/2016/LeaseForm-DOG201503.pdf*, which requires royalty payments based on the highest of four measures of value; and Oil and Gas Lease, State of Wyoming, Sec. 1(d)(iv), *https://lands.wyo.gov/trust-land-management/mineral-leasing/oil-gas-leases,* which requires payment based a value no less than that received by the United States for its royalties in the same field.

Public Comment: Some commenters stated that by requiring the highest bidweek price, ONRR is extracting royalties above what it may be entitled to receive because the average bidweek price is more representative of the gross proceeds that a typical lessee may receive.

ONRR Response: With very minor exceptions, no lessee is required, but rather elects, to use the index-based valuation option for its non-arm's-length gas sales. 30 CFR 1206.141(c) and 1206.142(d). A lessee that concludes that its use of the index-based valuation formula would increase its royalty obligation above what it considers due the United States does not have to use the formula. Moreover, neither the governing statutes nor lease terms cap royalty value at an individual lessee's gross proceeds or typical or average gross proceeds. Also, as referenced above, lessors frequently require that royalties be paid on the highest of multiple measures of royalty value, including measures that may exceed a lessee's average gross proceeds.

Public Comment: Some commenters opposed the withdrawal of the 2020 Rule, alleging it creates inconsistency between valuation of Federal gas, Federal oil, and Federal NGLs. Another commenter stated it creates an inconsistency with Indian gas valuation.

ONRR Response: No statute or lease term requires identical treatment for Federal oil, Federal NGLs, Federal gas, and Indian gas, and there are many instances where those commodities are treated differently. *Cf.* 30 CFR 1206.153(b)(1) (allowing a transportation allowance for Federal gas for the unused portion of an arm's-length contract's firm demand fee) with 30 CFR 1206.178 (allowing only the used portion of that fee for Indian gas).

Furthermore, with respect to the difference between Federal residue gas and NGLs, index-based valuation is, in most instances, an optional reporting methodology. *See* 30 CFR 1206.141(c) and 1206.142(d). In designing an optional reporting methodology, ONRR strives to find a path that ensures it receives a fair return. As a result, ONRR determined in the 2016 Valuation Rule that a lessee who elects to use the index-based valuation option must apply the highest bidweek price to value its residue gas. 81 FR 43347. On the other hand, because it is optional for all but a small number of lessees, most lessees can eschew the option and, instead, use actual sales prices, transportation costs, and processing costs.

Public Comment: Some commenters wrote that using the highest bidweek price instead of the average bidweek price will reduce the number of lessees that elect to use index-based pricing.

ONRR Response: ONRR is under no statutory obligation to offer an index-based pricing option. If, as reporting under the index-based valuation option in 2016 continues, lessees' reporting shows no or insignificant use of index-based reporting, ONRR will have data upon which to evaluate the further use of index-based reporting, including the possible need to amend the price. However, at this time, ONRR believes use of the highest bid-week price is necessary to ensure that the Federal lessor receives fair market value for its mineral resources.

2. Defective Reduction to Index To Account for Transportation

The 2016 Valuation Rule's index-based valuation method provided for a reduction to index prices to account for transportation costs. The amount of the reduction was calculated by ONRR based on ONRR's review and analysis of lessee-reported transportation costs for production years 2007–2010. For those years, the average reported transportation cost for the Gulf of Mexico was 4.6 percent of index value, and for all other areas, it was 8.6 percent of index value. In the 2016 Valuation Rule, the index-based valuation formula included a 5 percent reduction to index for the Gulf of Mexico and a 10 percent reduction for all other areas. 30 CFR 1206.141(c)(1)(iv) and 1206.142(d)(1)(iv).

Since the promulgation of the 2016 Valuation Rule, ONRR conducted a similar economic analysis for three other time periods. One of those time periods predated the Proposed 2020 Rule and ONRR's drafting of the final 2020 Rule. That period was used as a basis for the 2020 Rule. For production years 2014–2018, ONRR's analysis showed average lessee-reported transportation costs of 13.7 percent for the Gulf of Mexico and 16.8 percent for all other areas. Based on this information, the 2020 Rule increased the reductions to index from 5 percent to 10 percent for the Gulf of Mexico and from 10 percent to 15 percent for all other areas, again bounded by certain minimum and maximum amounts. 86 FR 4655.

Since publication of the 2020 Rule, ONRR conducted two additional analyses—one of production years 2016–2020 and the second for production years 2007–2020. These analyses showed average lessee-reported transportation costs of 19.6 percent and 14 percent for the Gulf of Mexico and 16.6 percent and 16.9 percent for all other areas, respectively.

In ONRR's experience, lessee-reported transportation costs may overstate allowable transportation costs for several reasons. First, costs reported at or soon after the time of production are estimates, and while, under 30 CFR 1210.30, a lessee must amend its reported royalties within 30 days of the discovery of an error, a lessee generally has up to six years after its initial royalty reporting is due to amend its reported costs. 30 U.S.C. 1721a(a). As a result, reported costs for recent time periods can be unreliable.

Second, a lessee frequently claims transportation costs in excess of the amounts allowed. Too often, a lessee

fails to reduce the charges of an affiliated or third-party pipeline service provider to eliminate non-allowable costs such as gathering costs and other expenses of placing gas in marketable condition. While ONRR audits a lessee's reports to determine if excessive transportation allowances have been claimed, ONRR has seven years within which to do so. 30 U.S.C. 1724(b)(1). Thus, reported costs for recent time periods are potentially unreliable.

Finally, ONRR does not have sufficient resources to audit or conduct other compliance activities on every reported transportation allowance. As a result, some overstated allowances will be missed. For all these reasons, reported—and particularly recently-reported—transportation costs may be higher than the reduction to index ONRR authorizes to account for transportation in any index-based valuation method.

Further, for the reasons discussed above in evaluating whether to use high or average bidweek prices, ONRR should err, if at all, by allowing lower rather than higher reductions to index prices to account for the lessee's transportation costs in any index-based valuation option.

ONRR is withdrawing the 2020 Rule for the reasons set forth in Section II. Nonetheless, the over-time increase in reported transportation costs relative to index is notable. Absent the other flaws in the 2020 Rule discussed in Sections II and III.A of this final rule, ONRR might conclude in a future rulemaking following notice and comment that it is appropriate to increase the reduction to index to account for transportation in much the same way as it did in the 2020 Rule. But any such action will take place in a separate rulemaking action, and this provision of the 2020 Rule is withdrawn at this time due to the deficiencies of the 2020 Rule.

3. Unwarranted Expansion of Index-Based Valuation Option to Arm's-Length Gas Sales

The 2016 Valuation Rule introduced the index-based valuation option for Federal gas disposed of in non-arm's-length transactions, which most often take the form of sales by a lessee to its affiliate. 30 CFR 1206.141(c) and 1206.142(d). The 2016 Valuation Rule considered and rejected comments strongly urging that the index-based valuation option also be available for arm's-length transactions, stating that ''[g]ross proceeds under valid arm's-length transactions are the best measure of value.'' 81 FR 43347.

The 2020 Rule expanded the index-based valuation option to Federal gas sold at arm's-length. 86 FR 4613. For the reasons described in Sections II and III.A, and the additional reasons set forth below, ONRR is withdrawing its expansion of the index-based valuation option to arm's-length sales, subject to the possibility of revisiting the topic in future rulemaking.

ONRR generally considers a lessee's arm's-length sale of gas to be the best indicator of value. 86 FR 4618. This position was reiterated in the 2020 Rule. *Id.* This indicator of value, however, is not always available when a lessee sells gas to its affiliate or otherwise disposes of gas in non-arm's-length transactions. Index prices can be a more reliable indicator of value than affiliate and other non-arm's-length sales prices because they are based on reported arm's-length sales. But an index-based valuation formula generally is not as reliable a measure of royalty value as is the use of actual sales prices, transportation costs, and processing costs obtained or incurred in arm's-length transactions. This is because, at a minimum, the implicit transportation deduction included in the index-based valuation formula is based on an average of all reported transportation costs for either the Gulf of Mexico or all other areas of the nation, and therefore is most often higher or lower than the transportation costs actually incurred for the gas being valued.

The 2016 Valuation Rule recognized this, reasoning that index prices are published prices derived from reported arm's-length transactions. ONRR considered the index-based valuation formula included in the 2016 Valuation Rule a simpler, acceptable, and potentially preferrable method to value gas disposed of in non-arm's-length (or affiliate) transactions. 81 FR 43338, 43346–43348. In short, under the 2016 Valuation Rule, the index-based valuation option allowed a lessee to, in effect, use a compilation of arm's-length transaction data to value gas not sold at arm's-length.

ONRR should have offered justification for why the 2020 Rule was adopting a provision expressly rejected by the 2016 Valuation Rule–declining to extend index-based valuation to arm's-length transactions–but it did not. *See* Section II.D. Using an index-based valuation formula to value arm's-length sales of Federal gas is problematic. For arm's-length transactions, the generally best indicator of value is typically available, and it is based on actual arm's-length transaction data specific to the gas at issue. 30 CFR 1206.141(b) and 1206.142(c). Nonetheless, the 2020 Rule extended the index-based option to gas sold at arm's-length. 86 FR 4618. The decision to do so was unsupported and premature, though ONRR may reexamine the issue in the future, after it has sufficient time to review, audit, and compare royalties received for index-based valuation of Federal gas sold at non-arm's-length and actual transaction data for Federal gas sold at arm's-length received after the reinstatement of the 2016 Valuation Rule. At this time, ONRR cannot determine whether the index-based valuation option adequately protects Federal and State royalty interests in Federal gas sold at arm's-length. Therefore, ONRR withdraws this portion of the 2020 Rule.

Public Comment: A few commenters, including multiple States, supported the withdrawal of the extension of the index-based option, asserting that ONRR should gain experience in administering an index-option for non-arm's-length sales before expanding index-based reporting into other areas. Similarly, commenters also stated but did not explain that extension of the index-based option is premature in light of pending Federal court litigation in *Cloud Peak Energy Inc.* v. *U.S. Dep't of the Interior,* No. 19–cv–120–SWS (D. Wyo.).

ONRR Response: ONRR agrees that the extension of the index-based option to arm's-length gas sales is premature at this time.

Public Comment: One commenter supported the withdrawal of this provision of the 2020 Rule because index prices and the index-based valuation option are not sufficiently transparent to the public.

ONRR Response: ONRR is withdrawing this provision of the 2020 Rule for reasons discussed in this final rule. ONRR monitors published index points to verify they meet specific liquidity requirements defined on onrr.gov. Additionally, index price publication companies have many checks in place to ensure the prices reported are transparent and representative of the market. They analyze transactions reported to the publication and validate any prices outside of a predetermined threshold. They also monitor and publish the number of reported trades and the total volumes associated with those trades.

Public Comment: Some commenters asserted that withdrawal of this portion of the 2020 Rule will increase administrative burdens; require lessees to maintain cross-departmental unbundling teams to analyze and continuously update unbundling cost methodologies; require lessees to obtain proprietary information from processors or make their best guess when the data

is not provided; and increase the number of unbundling-related compliance reviews and audits, as well as the administrative and legal costs to respond to such compliance reviews and audits.

ONRR Response: ONRR acknowledges that a lessee would realize an administrative cost savings if the index-based valuation option were available for arm's-length sales. In the *Economic Analysis* below, ONRR has estimated the administrative cost savings to lessees to be $1,077,000 per year. Further, ONRR has estimated that the 2020 Rule's extension of the option to arm's-length sales would reduce lessees' royalty payments by $7,460,000 per year otherwise due the United States ($6,800,000 for gas plus $660,000 for natural gas liquids (''NGLs'')). A lessee's cost savings, as outlined in the *Economic Analysis,* also does not change the fact that actual arm's-length sales, transportation, and processing data specific to the gas being valued are most often better measures of its value than a formula derived from reported data relating to indices compiled from data relevant to other arm's-length transactions.

Among the obligations that Congress placed on the Secretary is the responsibility to audit lessee's royalties and reporting. 30 U.S.C. 1711(c). A lessee, operator, or other person directly involved in developing, producing, transporting, purchasing, or selling oil or gas must establish and maintain any records that the Secretary may require. 30 U.S.C. 1713(a) and 30 CFR 1212.50–1212.52. ONRR and its predecessor agencies, as the Secretary's designees, have historically performed audits based on the records the commenters find burdensome to maintain or acquire and produce. Further, ONRR's methods have been upheld by Federal Courts. *Devon Energy Corp.* v. *Kempthorne,* 551 F.3d 1030 (D.C. Cir. 2008), *aff'g* Devon Valuation Determination; *Amoco Prod. Co.* v. *Watson,* 410 F.3d 722 (D.C. Cir. 2005), *aff'd sub nom. BP Am. Prod. Co.* v. *Burton,* 549 U.S. 84 (2006); *Burlington Res. Oil & Gas Co.,* 183 IBLA 333 (Apr. 23, 2013), *aff'd* 2014 WL 3721210 (N.D. Okla. July 24, 2014). When a lessee produces Federal oil and gas, it is foreseeable that it may be subject to ONRR compliance activities, including audit, and will incur associated administrative costs.

The commenters also ignore the fact that Federal oil and gas lessees have long been subject to the marketable condition rule, which is the source of the obligation to unbundle. Lessees are aware of the information and accounting that is required to comply with the marketable condition rule. Federal oil and gas lessees have long been required to calculate their gross proceeds, deduct transportation costs and processing costs, and segregate out (or unbundle) any marketable condition expenses if they seek to report the lowest allowable royalty value for gas. Further, in addition to entering into Federal oil and gas leases, lessees voluntarily enter into contracts with third-party and affiliate buyers, transporters, and processors. Nothing prevents each lessee from requiring its counterpart, by contract or otherwise, to provide the information necessary to accurately report royalty value, including the costs justifying the lessee's allowances. The Federal Government and its State beneficiaries are not obligated to save lessees the administrative costs of doing so.

Finally, even *assuming arguendo* that E.O.s 13783 and 13795 and S.O.s 3350 and 3360 policy objectives can still be relied upon, the 2020 Rule did not sufficiently support how the index-based option promotes its stated objective. The 2020 Rule states that it ''[wa]s not premised on increasing the production of oil, gas, or coal by some measured amount,'' but rather to generally ''incentivize both the conservation of natural resources (by extending the life of current operations) and domestic energy production over foreign energy production.'' 86 FR 4616. Because this conclusory statement is made without any supporting data, ONRR cannot determine, at this time, whether the 2020 Rule's extension of the index-based valuation provision to arm's-length sales would result in additional production. Thus, it was unsupported and must be withdrawn.

Public Comment: Some commenters opposed the withdrawal of this provision of the 2020 Rule because doing so reintroduces uncertainty in valuing Federal gas sold under arm's-length contracts.

ONRR Response: A lessee knows the amount at which it contracts to sell, transport, and process its gas. To ensure its compliance with its royalty reporting and payment obligations, the lessee can contract with the transporter or processor to require sharing of the information needed to accurately report royalty value. As long as a lessee negotiates contracts in a manner that allows it to meet its royalty obligations, its own actions minimize uncertainty. ONRR is not required to adopt an index-based valuation option for arm's-length sales simply because some lessees failed to secure rights to the data necessary to support the lessee's reported allowances.

Public Comment: One commenter stated that ONRR's revised economic analysis is an insufficient justification for a withdrawal of the index amendments because the difference between the 2020 Rule estimates as compared to the revised index analysis is nominal. According to the commenter, ONRR has collected $9 billion in royalties, rents and bonuses from oil and gas production per year over the past decade, and the 2020 Rule results in a $20.6 million decrease of in royalty collections per year, which equates to only a 0.2 percent decrease in average annual revenue collected. The commenter concluded that this achieves ONRR's objective of promulgating revenue neutral regulations.

ONRR Response: The 2020 Rule's economic analysis estimated that extending the index-based valuation option to arm's-length sales would increase royalties paid to the United States by $26,741,000 per year, but that the rule as a whole would decrease royalties paid by $28,879,000 per year. 86 FR 4641. The Proposed Withdrawal Rule and this final rule have improved on the methodology used to estimate economic impacts and now quantify the 2020 Rule's effect on royalties as follows: Extending the index-based valuation option to arm's-length sales would decrease royalties paid to the United States by $7,460,000 per year, and the 2020 Rule as a whole would decrease royalties paid by $64,600,000 per year. Cf. 86 FR 31208 with *Economic Analysis,* below.

ONRR does not consider these impacts revenue neutral. Further, judging the impact of an optional change in valuation available for some but not all Federal gas to the entirety of revenues from Federal oil, gas, coal, and other minerals distorts its significance. Finally, ONRR is not basing its withdrawal of any one of the five provisions discussed in this Section III on whether it incentivizes production or impacts revenue alone, but on the entirety of considerations discussed in this final rule. ONRR is withdrawing the five provisions for the additional reasons set forth in Section II above, and the defects set forth in this Section III further support withdrawal of the 2020 Rule.

IV. Other Public Comments Received in Response to the Proposed Withdrawal Rule

The following addresses additional comments received in response to the Proposed Withdrawal Rule.

A. Impacts of Frequent Rule Changes on Industry

Public Comment: Rule changes are costly and time consuming. Commenters stated that, if new rules or rule revisions become more frequent, confusion increases, and industry will be tempted to not make changes because industry may anticipate that those rules will be reversed in a few years. Commenters stated that rules should not change with each new administration, especially reversing and re-doing the rules every term. One commenter expressed its desire to see an ONRR rule that is fair and equitable for both sides.

ONRR Response: ONRR agrees that rule changes should not be based solely on a change in administration. However, duly promulgated rule changes can reduce confusion by eliminating ambiguities, addressing new industry practices and technology, or otherwise improving the regulations. In addition, ONRR must update and modernize its regulations when necessary and appropriate. In doing so, ONRR strives to promulgate fair and equitable regulations compliant with governing law. Consistent with this, ONRR is withdrawing the 2020 Rule. *See* Sections II and III.

B. Reliance on E.O.s Now Revoked

Public Comment: A few commenters referenced E.O.s that ONRR cited during the promulgation of the 2020 Rule that have since been revoked. Specifically, the commenters cite E.O. 13783 (Promoting Energy Independence and Economic Growth) and E.O. 13795 (Implementing an America-First Offshore Energy Strategy). Commenters also cite E.O.s now in effect, including E.O. 13990 (Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 FR 7037 (Jan. 25, 2021)).

ONRR Response: ONRR acknowledges that E.O.s 13783 and 13795 were revoked after the publication of the 2020 Rule but before its effective date. ONRR likewise acknowledges the E.O. 13990 directs agencies to consider certain matters such as science and climate change. ONRR's statutory directives pertain to the collection of royalties based on the fair market value. ONRR has no statutory framework within which to consider climate change as part of its rulemakings. ONRR addressed similar comments in the Proposed Withdrawal Rule. *See* 86 FR 31205.

C. Royalty Impacts to States

Public Comment: A commenter stated that the 2020 Rule failed to consider certain reasons for promulgating the 2016 Valuation Rule, such as ensuring the accurate calculation of royalties, which may be subsequently disbursed to States sharing in royalty revenues.

ONRR Response: ONRR distributes the royalties that it collects under Federal oil and gas leases as directed by the relevant disbursement statutes. *See* 30 U.S.C. 191(a) and 43 U.S.C. 1337(g)(2) and (7); *see also* 30 CFR part 1219. The Proposed 2020 Rule, the 2020 Rule, the Proposed Withdrawal Rule and this final rule estimate the impact of the amendments to States that share in royalty revenues in the respective sections entitled *Economic Analysis. See* 85 FR 62069–62070 and 86 FR 4649, 31214–31215.

D. Comments on the Merits of the Revenue-Neutral Amendments

Public Comment: ONRR received comments supporting and opposing withdrawal of some of the revenue-neutral amendments.

ONRR Response: ONRR is withdrawing the 2020 Rule for the reasons set forth above. As stated above, ONRR plans to publish proposed rules on some or all of the topics covered by the now withdrawn amendments.

V. Economic Analysis

ONRR's economic analysis of withdrawal of the 2020 Rule remains unchanged following publication of the Proposed Withdrawal Rule, except for the one-time administrative cost associated with the optional use of the index-based valuation method. The economic analysis is set forth in the Proposed Withdrawal Rule (86 FR 31208–31215) and summarized again below.

ONRR recognizes that estimated changes to royalty obligations and regulatory costs in the 2020 Rule impact many groups, including the Federal Government, State and local governments, and industry. These potential changes to royalty obligations can have broader impacts beyond the amount of royalties. Royalty collections are used by these governments in a variety of ways that include funding projects, developing infrastructure, and fueling economic growth.

Further, changes to royalties are transfers that are distinguishable from regulatory costs or cost savings. The estimated changes in royalties would affect both the private cost to the lessee and the amount of revenue collected by the Federal Government and disbursed to State and local governments. The net impact of the withdrawal of the 2020 Rule is an estimated $64.6 million annual increase in royalty collections over what would have been realized if the 2020 Rule went into effect.

Please note that, unless otherwise indicated, numbers in the tables in this section are rounded to the nearest thousand, and that the totals may not match due to rounding.

ESTIMATED CHANGES TO ROYALTY COLLECTIONS RESULTING FROM WITHDRAWAL OF THE 2020 RULE

[Annual]

Rule provision	Net change in royalties paid by lessees
Index-Based Valuation Method Extended to Arm's-Length Gas Sales	$6,800,000
Index-Based Valuation Method Extended to Arm's-Length NGL Sales	660,000
Highest to Average Bidweek Price for Non-Arm's-Length Gas Sales	5,062,000
Transportation Deduction Non-Arm's-Length Index-Based Valuation Method	8,033,000
Extraordinary Processing Allowances	11,131,000
Allowances for Certain OCS Gathering Costs	32,900,000
Total	64,600,000

ONRR also estimated that the oil and gas industry would face increased annual administrative costs of $2.8 million under the 2020 Rule. As discussed below, this is the net impact of various cost increasing and cost saving measures. Withdrawal of the 2020 Rule will result in an estimated net cost savings for industry.

SUMMARY OF ANNUAL ADMINISTRATIVE IMPACTS TO INDUSTRY FROM WITHDRAWAL OF THE 2020 RULE

Rule provision	Cost (cost savings)
Administrative Cost for Index-Based Valuation Method for Gas & NGLs	$1,077,000
Administrative Cost Savings for Allowances for Certain OCS Gathering	(3,931,000)
Total	(2,850,000)

Following the publication of the delay rules and after consideration of comments received in response to the First Delay Rule, ONRR assessed which parts of the previous economic analysis warranted revision. To provide a more complete analysis, this final rule presents the estimated royalty impacts of the withdrawal of the 2020 Rule using the updated analyses. Changes are measured relative to a baseline that includes the royalty changes finalized in the 2020 Rule.

As shown in the tables, an updated analysis of the impact to royalty under the 2020 Rule results in a total decrease in royalties of $64.6 million per year, which translates to an increase of $64.6 million per year under this withdrawal. This amount stands in contrast to the annual decrease of $28.9 million per year in royalties previously estimated in the 2020 Rule and further justifies withdrawal of the 2020 Rule. The change in amounts is largely attributable to the new assumption and method used to estimate the impact from extending the index-based valuation method to arm's-length natural gas and NGL sales. A more detailed explanation of the new method is described below. All impacts to royalties other than those related to the index-based valuation option remain unchanged from those published in the 2020 Rule.

The administrative costs and potential administrative cost savings attributable to the 2020 Rule have also been updated using the new assumptions for the extension of index-based valuation method to arm's-length sales. The administrative cost to industry for deepwater gathering allowances would remain unchanged from the value published in the 2020 Rule.

ONRR updated the estimated one-time administrative cost associated with the optional use of the index-based valuation method. These costs are only incurred by a lessee once to distinguish allowed and disallowed costs in reported processing and transportation allowances. In many situations, industry has already performed these calculations to comply with previous reporting requirements. ONRR reduced the total one-time administrative cost published in the Proposed Withdrawal Rule to be more reflective of only newer gas processing plants that would require the additional administrative cost. Unless there is a significant change in processing and transportation costs, the ratio of allowed to disallowed costs should not substantially change from year to year.

ONE-TIME ADMINISTRATIVE IMPACTS TO INDUSTRY FROM WITHDRAWAL OF 2020 RULE

Rule provision	Cost
Administrative Cost of Unbundling Related to Index-Based Valuation Method for Gas & NGLs	$243,000

Withdrawal of the 2020 Rule will increase administrative costs when compared to the current status quo, which is the 2020 Rule. While that rule has not yet gone into effect due to the First and Second Delay Rules, it would have gone into effect absent this withdrawal rule, and therefore is the appropriate point of comparison for the measurement of costs, benefits, and transfers.

ONRR used the same base dataset for this proposed rule's economic analysis as it used in the 2020 Rule for consistency and comparability. The description of the data was provided in the Economic Analysis of the 2020 Rule and is repeated here. ONRR reviewed royalty data for Federal oil, condensate, residue gas, unprocessed gas, fuel gas, gas lost (flared or vented), carbon dioxide (''CO_2''), sulfur, coalbed methane, and natural gas products (product codes 03, 04, 15, 16, 17, 19, 39, 07, 01, 02, 61, 62, 63, 64, and 65) from five calendar years, 2014–2018. ONRR used five calendar years of royalty data to reduce volatility caused by fluctuations in commodity pricing and volume swings. ONRR adjusted the historical data in this analysis to calendar year 2018 dollars using the Consumer Price Index (all items in U.S. city average, all urban consumers) published by the BLS. ONRR found that some companies aggregate their natural gas volumes from multiple leases into pools and sell that gas under multiple contracts. A lessee reports those sales and dispositions using the ''POOL'' sales type code. Only a small portion of these gas sales are non-arm's-length. ONRR used estimates of 10 percent of the POOL volumes in the economic analysis of non-arm's-length sales and 90 percent of the POOL volumes in the economic analysis of arm's-length sales.

Change in Royalty 1: Using Index-Based Valuation Method to Value Arm's-Length Federal Unprocessed Gas, Residue Gas, Fuel Gas, and Coalbed Methane

ONRR analyzed this provision similarly to the 2020 Rule, assuming that half of lessees would elect to use the index-based valuation method. ONRR received many comments stating that this assumption was flawed, because a lessee will typically act in a manner that maximizes, not harms, financial benefits to the lessee. ONRR stated in the 2020 Rule that the assumption that half of lessees would elect to use the index-based valuation option was an attempt to simplify the royalty impact estimation. Due to the delay rules, ONRR was able to apply a more sophisticated set of assumptions to estimate the lessees that would likely benefit from the 2020 Rule's amendments to the index-based valuation option and those that would not. ONRR began the analysis with a similar rationale on the same data that

it used in the 2020 Rule's calculation. ONRR reviewed the reported royalty data for all Federal gas sales except for non-arm's-length transactions (discussed below), future valuation agreements, and percentage of proceeds (''POP'') contracts. ONRR also adjusted the POOL sales down to 90 percent (as described above), which were spread across ten major geographic areas with active index prices. The ten areas account for over 95 percent of all Federal gas produced. ONRR assumed the remaining five percent of lessees producing Federal gas will not elect the index-based method because areas outside of major producing basins may have infrastructure limitations or limited access to index pricing. The ten geographic areas are:

1. Offshore Gulf of Mexico
2. Big Horn Basin
3. Green River Basin
4. Permian Basin
5. Piceance Basin
6. Powder River Basin
7. San Juan Basin
8. Uinta Basin
9. Williston Basin
10. Wind River Basin

To calculate the estimated royalty impact, ONRR:

(1) Identified the monthly bidweek price index, published by *Platts Inside FERC,* for each applicable area—Northwest Pipeline Rockies for Green River, Piceance and Uinta basins; El Paso San Juan for San Juan basin; Colorado Interstate Gas for Big Horn, Powder River, Williston, and Wind River basins; El Paso Permian for Permian basin; and Henry Hub for the Gulf of Mexico. ONRR determined the applicability of a price index based on proximity to the producing area and the frequency with which ONRR's audit and compliance staff verify these index prices in sales contracts;

(2) subtracted the appropriate transportation deduction as described in the 2020 Rule from the midpoint index price identified in step (1);

(3) compared the reported monthly price for each lease inclusive of any reported transportation allowances to the applicable index price for the lease calculated in step (2) for all months in the first year of reported royalty data in the dataset;

(4) identified all leases in step (3) where the reported price exceeded the price calculated in step (2) for seven or more months in the time period;

(5) used the lease list created in step (4) as the base universe of properties that would elect to use the index-based valuation method available;

(6) compared the actual reported price for each month for each lease in the universe identified in step (5), inclusive of transportation allowances reported, to the calculated price in step (2) to identify the difference between what was reported as actual royalties and what would have been reported as royalties under the terms of the index-based valuation method;

(7) performed this calculation and comparison for the next two sets of two-year time periods in the remaining four years of royalty reporting in the dataset; and

(8) calculated the total difference in the four years between the original reported royalty prices and royalties of the identified lease universe that elected the index-based valuation method, then divided that total by four to get an annual estimated royalty impact.

This new method of identification of the lease universe that would elect the index-based valuation method if given the opportunity is the basis for the differences between the estimated royalty impact published in the 2020 Rule and the estimated royalty impact included in this final rule. Also, this identification of the leases that stand to benefit is similar to how a lessee will make its decisions and is a better method to estimate the royalty impact. ONRR compared the monthly prices reported to it in the first year of the data period, inclusive of transportation allowances, to the index prices for the appropriate producing areas, inclusive of transportation deductions. ONRR then identified the leases with reported prices higher than the index price in seven or more months of the year. For these leases with prices higher than index for more than half of the year, ONRR assumes the lessee would elect to use the index-based valuation method. For arm's-length natural gas sales, this equates to 39.8 percent of the entire list of leases and represents a percentage that is lower than the 50 percent assumption made by ONRR in the 2020 Rule's estimated impacts on royalty collections of this same provision. This new percentage incorporates a more logical identification of the leases taking into account a lessee's potential financial benefit.

ONRR estimates the index-based valuation method in the 2020 Rule would have decreased royalty payments on arm's-length natural gas by approximately $6.8 million per year when compared to ONRR regulations in effect prior to the 2020 Rule.

ANNUAL CHANGE IN ROYALTIES PAID USING INDEX-BASED METHOD FOR ARM'S-LENGTH GAS SALES FROM WITHDRAWAL OF THE 2020 RULE

	Gulf of Mexico	Other areas	Total
Annualized Reported Royalties from Identified Lease Universe	$51,720,000	$168,850,000	$220,570,000
Royalties Estimated using Index-Based Valuation Method for Lease Universe	53,940,000	159,790,000	213,730,000
Difference	(2,220,000)	9,060,000	6,840,000

Change in Royalties 2: Using the Index-Based Valuation Method To Value Arm's-Length Sales of Federal NGLs

ONRR used similar changes to the assumptions when calculating the royalty impact from extending the index-based valuation option to arm's-length sales of NGLs. As in the previous section, ONRR's goal was to identify a universe of leases that would benefit financially from electing the index-based valuation method. In the 2020 Rule, ONRR assumed that half of the lessees would elect the method without regard to financial benefit or harm.

ONRR used the same dataset for this analysis that was used in the 2020 Rule. It included all NGL sales except for non-arm's-length transactions and future valuation agreements. ONRR also adjusted the POOL sales down to 90 percent (as described above). These sales were spread across the same ten major geographic areas with active index prices for this analysis. To calculate the estimated royalty impact of the index-based valuation method on NGLs from Federal leases, ONRR:

(1) Identified the *Platts Oilgram Price Report Price Average Supplement (Platts Conway)* or *OPIS LP Gas Spot Prices Monthly (OPIS Mont Belvieu)* for published monthly midpoint NGL prices per component applicable to each area: Platts Conway for Williston and Wind River basins; and OPIS Mont

Belvieu non-TET for the Gulf of Mexico, Big Horn, Green River, Permian, Piceance, Powder River, San Juan, and Uinta basins. In ONRR's audit experience, OPIS' prices are used to value NGLs in contracts more frequently at Mont Belvieu, and Platts' prices are used more frequently at Conway;

(2) calculated NGL basket prices (weighted average prices to group the individual NGL components), which were compared to the imputed price from the monthly royalty report. The baskets illustrate the difference in the gas composition between Conway, Kansas and Mont Belvieu, Texas. The NGL basket hydrocarbon allocations are:

Platts Conway basket	Percent	OPIS Mont Belvieu basket	Percent
Ethane-propane (EP mix)	40	Ethane	42
Propane	28	Non-TET Propane	28
Isobutane	10	Non-TET Isobutane	6
Normal Butane	7	Normal Butane	11
Natural Gasoline	15	Natural Gasoline	13

(3) subtracted the current processing deductions, as well as fractionation costs and transportation costs referenced in ONRR regulations without amendment by the 2020 Rule (*see* 30 CFR 1206.142(d)(2)(ii)), as shown in the table below from the NGL basket price calculated in step (2):

NGL DEDUCTION

[$/gal]

	Gulf of Mexico	New Mexico	Other areas
Processing	$0.10	$0.15	$0.15
Transportation and Fractionation	0.05	0.07	0.12
Total (*$/gal*)	0.15	0.22	0.27

(4) compared the reported monthly price for each lease inclusive of any reported transportation or processing allowances to the applicable index price for the lease calculated in step (3) for all months in the first year of reported royalty data in the dataset;

(5) identified all leases in step (4) where the reported price exceeded the price calculated in step (3) for seven or more months in the time period;

(6) used the lease list created in step (5) as the base universe of leases that would elect to use the index-based valuation method if available;

(7) compared the actual reported price for each month for each lease in the universe identified in step (6), inclusive of transportation and processing allowances reported, to the calculated price in step (3) to identify the difference between what was reported as actual royalties and what would have been reported as royalties under the terms of the index-based valuation method;

(8) performed this calculation and comparison for the next two sets of two-year time periods in the remaining four years of royalty reporting in the dataset; and

(9) calculated the total difference in the four years between the original reported royalty prices and the royalties if the identified lease universe elected the index-based valuation method, then divided that total by four to get an annual estimated royalty impact.

This new method of identification of the lease universe that would elect the index-based valuation method is the basis for the difference between the estimated royalty impact published in the 2020 Rule and the estimated royalty impact included in this final rule.

ONRR estimates the index-based valuation method in the 2020 Rule would have decreased royalty payments on arm's-length NGLs by approximately $660,000 per year, and that withdrawing the 2020 Rule will increase royalty payments by $660,000 annually.

ANNUAL CHANGE IN ROYALTIES PAID USING INDEX-BASED VALUATION METHOD FOR ARM'S-LENGTH NGL SALES FROM WITHDRAWAL OF THE 2020 RULE

	Gulf of Mexico	New Mexico	Other areas	Total
Annualized Reported Royalties from Identified Lease Universe	$4,990,000	$350,000	$9,100,000	$14,440,000
Royalties Estimated Using Index-Based Valuation Method for Lease Universe	3,470,000	290,000	10,020,000	13,780,000
Annual Net Change in Royalties Paid Using Index-Based Valuation Method for NGLs	1,520,000	60,000	(920,000)	660,000

Change in Royalties 3: Using the Average Index Price Versus the Highest Published Index Price To Value Non-Arm's-Length Federal Unprocessed Gas, Residue Gas, Coalbed Methane, and NGLs

In the 2020 Rule, ONRR amended the index-based valuation method to use the average bidweek price, rather than the highest bidweek price, for the appropriate index-pricing point. ONRR accounted for the impacts to royalty collections attributable to arm's-length natural gas transactions in the earlier section. This section will focus on the impact to royalty collections only attributable to non-arm's-length natural gas transactions.

The method for calculation in this final rule is similar to the method used in the 2020 Rule, with adjustments made related to the universe of leases that would elect the index-based valuation method. ONRR compared the monthly prices reported to it in the first year of the data period, inclusive of transportation allowances, to the index prices for the appropriate producing areas, inclusive of transportation deductions. ONRR then identified the leases with reported prices higher than the index price in seven or more months of the year. For these leases with prices higher than index for more than half of the year, ONRR assumes the lessee would elect to use the index-based valuation method. For non-arm's-length natural gas sales, this equates to 56.4 percent of the entire list of leases and represents a percentage that is higher than the 50 percent assumption made by ONRR in the 2020 Rule's estimated impacts on royalty collections of this same provision. This new percentage incorporates a more logical identification of the leases taking into account a lessee's potential financial benefit.

ONRR used reported royalty data for non-arm's-length (''NARM'') sales and ten percent of the POOL sales type codes based on the assumption above in the same ten major geographic areas with active index-pricing points, also listed above.

To calculate the estimated impact, ONRR:

(1) Identified the *Platts Inside FERC* published monthly midpoint and high prices for the index applicable to each area— Northwest Pipeline Rockies for Green River, Piceance and Uinta basins; El Paso San Juan for San Juan basin; Colorado Interstate Gas for Big Horn, Powder River, Williston, and Wind River basins; El Paso Permian for Permian basin; and Henry Hub for the Gulf of Mexico;

(2) multiplied the royalty volume by the published index prices identified for each region;

(3) totaled the estimated royalties using the published index prices calculated in step (2);

(4) calculated the annual average index-based royalties for both the high and volume-weighted-average prices calculated in step (3) by dividing by five (number of years in this analysis); and

(5) subtracted the difference between the totals calculated in step (4).

Because ONRR identified that 56.4 percent of leases fall in the universe of leases that would elect the index-based valuation method, ONRR reduced the total estimate by 43.6 percent in the following table. ONRR estimated that the result of this change is that the 2020 Rule, if it went into effect, would result in a decrease in annual royalty payments of approximately $5 million, and a withdrawal of that rule would result in an increase in annual royalty payments by a like amount, as reflected in the table below.

ESTIMATED IMPACT TO ROYALTY COLLECTIONS DUE TO WITHDRAWAL OF 2020 RULE'S HIGH TO MIDPOINT MODIFICATION FOR NON-ARM'S-LENGTH SALES OF NATURAL GAS USING INDEX-BASED VALUATION METHOD

	Gulf of Mexico	Onshore basins	Total
Royalties Estimated Using High Index Price	$107,736,000	$198,170,000	$305,907,000
Royalties Estimated Using Published Average Bidweek Price	107,448,000	189,483,000	296,931,000
Annual Change in Royalties Paid due to High to Midpoint Change	288,000	8,687,000	8,975,000
56.4% of applicable leases	.....	.....	5,062,000

Change in Royalties 4: Modifying the Index-Based Valuation Method To Account for Transportation in Valuing Non-Arm's-Length Federal Unprocessed Gas, Residue Gas, and Coalbed Methane

The 2020 Rule increased the reductions to index price to account for transportation of production valued under the non-arm's-length index-based valuation method first adopted in the 2016 Valuation Rule. ONRR used the new method described previously in this Economic Analysis to identify the likely lease universe of non-arm's-length natural gas sales. ONRR identified the same 56.4 percent of non-arm's-length natural gas leases as the universe that would elect the method.

To estimate the royalty impact of the change in amount intended to account for transportation, ONRR used reported royalty data using NARM and ten percent of the POOL sales type codes from the same ten major geographic areas with active index-pricing points listed above.

To calculate the estimated impact, ONRR:

(1) Identified appropriate areas using *Platts Inside FERC* index prices (see list above);

(2) calculated the transportation-related adjustment as published in the current regulations and the adjustment outlined in the table below for each area identified in step (1);

TRANSPORTATION DEDUCTION OF INDEX-BASED VALUATION METHOD FOR NON-ARM'S-LENGTH GAS

[$/MMBtu]

Element	2016 Valuation rule	2020 rule
Gulf of Mexico %	5%	10%
Gulf of Mexico Low Limit	$0.10	$0.10
Gulf of Mexico High Limit	0.30	0.40
Other Areas %	10%	15%
Other Areas Low Limit	0.10	0.10
Other Areas High Limit	0.30	0.50

(3) multiplied the royalty volume by the applicable transportation deduction identified for each area calculated in step (2);

(4) totaled the estimated royalty impact based off both transportation deductions calculated in step (3);

(5) calculated the annual average royalty impact for both methods calculated in step (4) by dividing by five (number of years in this analysis); and

(6) subtracted the difference between the totals calculated in step (5).

Because ONRR identified the universe of 56.4 percent of lessees that will likely elect this method, ONRR reduced the total estimated impact to royalty collections by 43.6 percent. ONRR estimated the change would result in a decrease in royalty collections of approximately $8 million per year if the 2020 Rule went into effect, and an increase in royalty collections of like amount if the 2020 Rule is withdrawn, as reflected in the table below.

ANNUAL ROYALTY IMPACT DUE TO TRANSPORTATION DEDUCTION MODIFICATION FOR NON-ARM'S-LENGTH SALES OF NATURAL GAS FROM WITHDRAWAL OF THE 2020 RULE

	Gulf of Mexico	Other areas	Total
Current Regulations Transport Deduction	($5,387,000)	($16,375,000)	($21,762,000)
Estimate using 2020 Rule Transport Deduction	(10,346,000	(25,659,000)	(36,005,000)
Change	4,959,000	9,284,000	14,243,000
56.4% universe of leases			8,033,000

Change in Royalties 5: Extraordinary Gas Processing Cost Allowances for Federal Gas

The 2020 Rule allows a lessee to request an extraordinary processing cost allowance. Below, ONRR uses the same calculation method for these royalty impacts as it did in the 2020 Rule. Using the approvals ONRR granted prior to the 2016 Valuation Rule, ONRR identified the 127 leases claiming an extraordinary processing allowance for residue gas, sulfur, and CO_2 for calendar years 2014–2018. The total processing costs are reported across all three products for these unique situations. For these leases, ONRR reviewed all form ONRR–2014 royalty lines with a processing allowance reported by lessees. For CO_2 and sulfur produced from these leases, ONRR then calculated the annual average processing allowances, which exceeded the 66 ⅔ percent limit and found that only two years exceeded the 66 ⅔ percent limit. Under these unique approved exceptions, the processing allowances are also reported against residue gas. To account for this, ONRR added the average annual processing allowances taken from those same leases for residue gas.

Based on these calculations, ONRR previously estimated the royalty impact of the 2020 Rule's reinstatement of extraordinary processing allowances as decreasing royalties by $11.1 million per year, and ONRR now estimates the royalty impact of withdrawing this provision of the 2020 Rule at an increase in royalties of $11.1 million per year. However, ONRR recognizes that these estimates of decrease from the 2020 Rule and increase from this final rule likely undervalue actual impacts for the reasons discussed in Section III.D., above—*i.e.,* hard caps rather than soft caps on processing allowances may result in more lessees applying for extraordinary processing allowances than did when they could apply to exceed soft caps instead. As a result, there could be an increase in the number of requests submitted to ONRR for extraordinary processing allowances under the 2020 Rule and a larger-than-quantified impact upon withdrawal of the 2020 rule. But there is little data available to identify the number or magnitude of incremental requests possible under the 2020 Rule, and there is not enough information to determine how many of these requests would be approved or denied by ONRR. For these reasons, ONRR is unable to more precisely estimate the royalty impact of reinstating extraordinary processing allowances under the 2020 Rule or withdrawing those allowances under this final rule.

ESTIMATED ANNUAL CHANGE IN ROYALTY COLLECTIONS FROM WITHDRAWAL OF THE 2020 RULE

Annual Average Sulfur Allowances in Excess of 66 ⅔%	$348,000
Annual Average Residue Gas Allowance	10,783,000
Estimated Annual Impact on Royalties	11,131,000

Change in Royalties 6: Transportation Allowances for Certain OCS Gathering for Federal Oil and Gas

In the 2020 Rule, ONRR adopted regulatory changes that would allow an OCS lessee to take certain gathering costs as part of its transportation allowance. ONRR adjusted its method for calculating this royalty impact in response to comments received on the Proposed 2020 Rule and published a corrected method in the 2020 Rule. ONRR will continue to use the adjusted method here to estimate the royalty impact of the 2020 Rule, whether it goes into effect or is withdrawn.

As previously discussed, the Deepwater Policy was in effect from 1999 through December 31, 2016. Under the Deepwater Policy, ONRR allowed a lessee to treat certain costs for subsea gathering as transportation expenses and to deduct those costs in calculating its royalty obligations. The 2016 Valuation Rule rescinded the Deepwater Policy, but the 2020 Rule codified a deepwater gathering allowance similar to the Deepwater Policy. To analyze the impact to industry of the 2020 Rule's deepwater gathering allowance, ONRR used data from BSEE's Technical Information Management System database to identify 113 subsea pipeline segments, and 169 potentially eligible leases, which might qualify for a deepwater gathering allowance. ONRR assumed that all segments were similar (in other words, no adjustments were made to account for the size, length, or type of pipeline) and considered only the pipeline segments that were active and supporting producing leases. To determine the range (shown in the tables at the end of this section as low, mid, and high estimates) of changes to royalties, ONRR estimated a 15 percent error rate in the identification of the 113 eligible pipeline segments. This resulted in a range of 96 to 130 eligible pipeline segments. ONRR's audit data is

available for 13 subsea gathering segments serving 15 leases covering time periods from 1999 through 2010. ONRR used the data to determine an average initial capital investment in the pipeline segments. Then, ONRR used the initial capital investment total to calculate depreciation and a return on undepreciated capital investment (also known as the return on investment or ''ROI'') for eligible pipeline segments and calculated depreciation using a 20-year straight-line depreciation schedule.

ONRR calculated the return on investment using the average BBB Bond rate for January 2018 (the BBB Bond rating is a credit rating used by the Standard & Poor's credit agency to signify a certain risk level of long-term bonds and other investments). ONRR based the calculations for depreciation and ROI on the first year a pipeline was in service. From the same audit information, ONRR calculated an average annual operating and maintenance (''O&M'') cost. ONRR increased the O&M cost by 12 percent to account for overhead expenses. ONRR then decreased the total annual O&M cost per pipeline segment by nine percent because, on average, nine percent of wellhead production volume is water, which must be excluded from any calculation of a permissible deduction. ONRR chose these two percentages based on knowledge and information gathered during audits of leases located in the Gulf of Mexico. Finally, ONRR used an average royalty rate of 14 percent, which is the volume-weighted-average royalty rate for the non-Section 6 leases in the Gulf of Mexico. *See* 43 U.S.C. 1335(a)(9). Based on these calculations, the average annual allowance per pipeline segment during the period that ONRR collected data from was approximately $233,000. ONRR used this value to calculate a per-lease cost based on the number of eligible leases during the same period. ONRR then applied this value to the current number of eligible leases. This represented the estimated amount per lease for gathering that ONRR would allow a lessee to take as a transportation allowance based on the 2020 Rule's deepwater gathering allowance. To calculate a range for the total cost, ONRR multiplied the average annual allowance by the low (96), mid (113), and high (130) number of potentially eligible segments. The low, mid, and high annual allowance estimates are $35 million, $41.1 million, and $47.3 million, respectively.

Of the eligible leases, 68 of 169, or about 40 percent, are estimated to qualify for a deduction under the 2020 Rule's deepwater gathering allowance. But due to varying lease terms, multiple royalty relief programs, price thresholds, volume thresholds, and other factors, ONRR estimated that half of the 68, or 34, leases eligible for royalty relief (20 percent of 169) have received royalty relief, which limits the value of a deepwater gathering allowance. ONRR chose to use an estimate of half of the leases for consistency, and it decreased the low, mid, and high annual cost-to-industry estimates by 20 percent. The table below shows the estimated royalty impact of withdrawing this provision of the 2020 Rule.

ANNUAL ESTIMATED IMPACT TO ROYALTY COLLECTIONS FROM WITHDRAWAL OF THE 2020 RULE

	Low	Mid	High
Royalty Impact	$28,000,000	$32,900,000	$37,900,000

Cost Savings 1: Transportation Allowances for Certain OCS Gathering Costs for Offshore Federal Oil and Gas

The 2020 Rule, by authorizing transportation allowances for certain OCS gathering, would result in an administrative cost to industry because it requires a qualified lessee to monitor its costs and perform additional calculations if it is to claim the allowance. ONRR identified no need to adjust or change the analysis performed in the 2020 Rule to estimate this cost to industry. The cost to perform these calculations is significant because industry often hires additional labor or outside consultants to calculate subsea pipeline movement costs. ONRR estimates that each lessee with leases eligible for transportation allowances for deepwater gathering systems will allocate one full-time employee annually (or incur the equivalent cost for an outside consultant) to perform the calculation. ONRR used data from the BLS to estimate the hourly cost for industry accountants in a metropolitan area [$42.33 mean hourly wage] with a multiplier of 1.4 for industry benefits to equal approximately $59.26 per hour. Using this fully burdened labor cost per hour, ONRR estimated that the annual administrative cost savings to industry if the 2020 Rule is withdrawn would be approximately $3.9 million.

ANNUAL ADMINISTRATIVE COST SAVINGS TO INDUSTRY TO CALCULATE CERTAIN OCS GATHERING COSTS FROM WITHDRAWAL OF THE 2020 RULE

	Annual burden hours per company	Industry labor cost/hour	Companies reporting eligible leases	Estimated cost savings to industry
Allowance for Certain OCS Gathering Costs Withdrawn	2,080	$59.26	32	$3,931,000

Cost 1: Administrative Cost From Using Index-Based Valuation Method To Value Arm's-Length Federal Unprocessed Gas, Residue Gas, Fuel Gas, Coalbed Methane, and NGLs

In the 2020 Rule, ONRR assumed that half of the lessees would elect to use the index-based valuation method to value their arm's-length natural gas and NGL transactions. As described earlier in this Economic Analysis, ONRR identified that 39.8 percent of leases with arm's-length sales would elect this option. This is more accurate than the 2020 Rule's assumptions, and ONRR will use it to estimate the potential administrative cost savings for industry.

ONRR estimated the index-based valuation method would have shortened the time burden per line reported on the ONRR–2014 royalty reporting form by 50 percent (to 1.5 minutes per electronic line submission and 3.5 minutes per manual line submission). As with Cost Savings 1, ONRR used tables from the BLS to estimate the fully burdened

hourly cost for an industry accountant in a metropolitan area working in oil and gas extraction. The industry labor cost factor for accountants would be approximately $59.26 per hour = [$42.33 (mean hourly wage) × 1.4 (including employee benefits)]. Using a labor cost factor of $59.26 per hour, ONRR estimates the annual administrative cost to industry will be approximately $1.1 million if the 2020 Rule is withdrawn.

ANNUAL ADMINISTRATIVE COSTS TO INDUSTRY FROM WITHDRAWAL OF THE 2020 RULE

	Time burden per line reported (minutes)	Estimated lines reported using index option (50%)	Annual burden hours
Electronic Reporting (99%)	1.5	710,525	17,763
Manual Reporting (1%)	3.5	7,177	419
Industry Labor Cost/hour			$59.26
Total Costs			1,077,000

Cost 2: Administrative Cost of Using Index-Based Valuation Method To Value Residue Gas and NGLs Because of Simplified Processing and Transportation Cost Calculations

In the 2020 Rule, ONRR calculated the potential one-time administrative cost savings for industry if a lessee elects to use the index-based valuation method. 86 FR 4641. ONRR slightly modified this calculation and method as described further below. Use of the index-based valuation method eliminates the need to segregate deductible costs of transportation and processing from non-deductible costs of placing production in marketable condition. This segregation or allocation of costs is often referred to as ''unbundling.'' Industry would unbundle transportation systems and processing plants one time under the current regulatory scheme (*i.e.,* in absence of the 2020 Rule), and then use those unbundled cost allocations for subsequent royalty calculations.

While industry is responsible for calculating these costs, ONRR has published and calculated several unbundling cost allocations. It takes approximately 100 hours of labor per gas plant. ONRR calculated the average number of gas plants reported per lessee to be 3.4, across a total of 448 lessees reporting residue gas and NGLs, between 2014–2018. Using the BLS labor cost per hour of $59.26 (described above) and the assumption that 50 percent of lessees will choose the index-based valuation method, ONRR believed the 2020 Rule would have resulted in a one-time cost savings to industry of $4.5 million dollars. *See* 86 FR 4641 and 4648.

ONRR updated its analysis for this administrative cost. Given that the 2020 Rule has not gone into effect yet, industry has been unbundling its processing and transportation costs already for gas plants and transportation systems used under the current regulations. Because of this, new unbundling efforts would only occur on newly created gas plants or for gas plants that undergo major technological changes. ONRR looked at all the gas plants reported for Federal gas production since the start of 2020. ONRR also identified the number of new gas plants companies requested be added to ONRR's system for reporting since the start of 2020. The newly added gas plants represented 5.4 percent of all gas plants reported to ONRR for Federal production. This group represents those plants that would require lessees to perform a new unbundling analysis. ONRR applied this percentage to the total one-time cost savings in the 2020 Rule and now estimates that the withdrawal of the 2020 Rule will result in lessees incurring this one-time administrative cost of $243,000.

State and Local Governments

ONRR estimated that, because of the 2020 Rule, States and certain local governments would have received an overall decrease in royalty disbursements based on the category that leases fall under, including OCSLA section 8(g) leases. *See* 43 U.S.C. 1337(g), Gulf of Mexico Energy Security Act (''GOMESA''), 43 U.S.C. 1331, *et seq.,* and onshore Federal lands. ONRR disburses royalties based on where the royalty-bearing oil and gas was produced.

Except for production from Federal leases in Alaska (where Alaska receives 90 percent of the distribution), for Section 8(g) leases in the OCS, and qualified leases under GOMESA in the OCS (more information on distribution percentages at *https://revenuedata.doi.gov/how-it-works/gomesa/*), the following distribution table generally applies:

ONRR DISBURSEMENTS BY AREA

	Onshore	Offshore
Federal	51%	95.2%
State	49%	4.8%

More information on ONRR's disbursements to any specific State or local government can be found at *https://revenuedata.doi.gov/explore/#federal-disbursements.*

Indian Lessors

The provisions in the 2020 Rule and this withdrawal are not expected to affect Indian lessors.

Federal Government

The impact of the 2020 Rule to the Federal Government will be a decrease in royalty collections. ONRR estimates the impact of the 2020 Rule to the Federal Government (detailed in the next table of this section) would be a reduction in royalties of $49.7 million per year. The estimated impact to royalty collections of the withdrawal of the 2020 Rule would be an increase in royalties of $49.7 million per year.

Summary of Royalty Impacts and Costs to Industry, State and Local Governments, Indian Lessors, and the Federal Government

The table below shows the updated net change in royalties expected under

this withdrawal. The table breaks out the impacts to Federal and State disbursements based on the typical distributions noted in the table above and the appropriate product weightings and the location of the affected leases.

WITHDRAWAL OF THE 2020 RULE: ANNUAL IMPACT TO ROYALY COLLECTIONS, THE FEDERAL GOVERNMENT, AND STATES

Rule provision	Impact to royalty collections	Federal portion	State portion
Index-Based Valuation Method Extended to Arm's-Length Gas Sales	$6,800,000	$4,180,000	$2,620,000
Index-Based Valuation Method Extended to Arm's-Length NGL Sales	660,000	430,000	230,000
High to Midpoint Index Price for Non-Arm's-Length Gas Sales	5,060,000	3,110,000	1,950,000
Transportation Deduction Non-Arm's-Length Index-Based Valuation Method	8,030,000	4,930,000	3,100,000
Extraordinary Processing Allowance	11,130,000	5,680,000	5,450,000
Allowance for Certain OCS Gathering Costs	32,900,000	31,320,000	1,580,000
Total	64,600,000	49,700,000	14,900,000

Note: Totals may not add due to rounding.

Federal Oil and Gas Amendments With No Estimated Change to Royalty or Regulatory Costs

Change 1: Default Provision Applicable to Federal Oil and Gas

The 2016 Valuation Rule added the default provision to ONRR regulations. The 2020 Rule removed the default provision from ONRR regulations. In instances of misconduct, breach of a lessee's duty to market, or other situations where royalty value cannot be determined under ONRR's valuation rules, ONRR can use the Secretary's statutory authority and the authority granted to the Secretary under the terms of the applicable leases to determine Federal oil and gas royalty value, as ONRR would have done prior to adoption of the 2016 Valuation Rule. ONRR has never found an impact to royalty collections on account of the default provision.

Federal and Indian Coal

In the 2020 Rule, ONRR estimated there will be no change to royalty collections for the Federal Government, Indian Tribes, individual Indian mineral owners, States, or industry for Federal and Indian coal. ONRR has not changed or adjusted this estimate in this final rule. There is no impact to royalty collections on account of the coal provisions due to this final rule's withdrawals.

VI. Procedural Matters

A. Regulatory Planning and Review (E.O. 12866 and 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (''OIRA'') of OMB will review all significant rulemakings. OMB has determined that this final rule is a significant regulatory action under E.O. 12866. The primary effect of this final rule is on royalty payments. ONRR expects that this final rule will largely result in transfers, which are described in the table below. ONRR also anticipates that this final rule will result in annual administrative cost savings of $2.85 million and a one-time administrative cost of $243,000.

Please note that, unless otherwise indicated, numbers in the tables in this section are rounded to the nearest thousand and that the totals may not match due to rounding.

SUMMARY OF ESTIMATED CHANGES TO ROYALTY COLLECTIONS FROM THE WITHDRAWAL OF THE 2020 RULE

[Annual]

Rule provision	Net change in royalties paid by lessees
Index-Based Valuation Method Extended to Arm's-Length Gas Sales	$6,800,000
Index-Based Valuation Method Extended to Arm's-Length NGL Sales	660,000
High to Midpoint Index Price for Non-Arm's-Length Gas Sales	5,062,000
Transportation Deduction Non-Arm's-Length Index-Based Valuation Method	8,033,000
Extraordinary Processing Allowances	11,131,000
Allowances for Certain OCS Gathering Costs	32,900,000
Total	64,600,000

To estimate the present value of potential administrative costs/savings to industry, ONRR looked at two potential time periods to represent various production lives of oil and gas leases. ONRR applied three percent and seven percent discount rates as described in OMB Circular A–4, using a base year of 2021, and reported in 2020 dollars. As described above, ONRR estimates a cost to industry in the first year and incursion of administrative cost savings each year thereafter.

SUMMARY OF ANNUAL ADMINISTRATIVE IMPACTS TO INDUSTRY FROM THE WITHDRAWAL OF 2020 RULE

Rule provision	Cost (cost savings)
Administrative Cost Savings for Index-Based Valuation Method for Arm's-Length Gas & NGL Sales	$1,077,000

SUMMARY OF ANNUAL ADMINISTRATIVE IMPACTS TO INDUSTRY FROM THE WITHDRAWAL OF 2020 RULE—Continued

Rule provision	Cost (cost savings)
Administrative Cost for Allowances for Certain OCS Gathering	(3,931,000)
Total	(2,850,000)

SUMMARY OF ONE-TIME ADMINISTRATIVE IMPACTS TO INDUSTRY FROM THE WITHDRAWAL OF 2020 RULE

Rule provision	Cost
Administrative Cost-Savings in lieu of Unbundling related to Index-Based Valuation Method for Arm's-Length Gas & NGLs	$243,000

NET PRESENT VALUE OF ADMINISTRATIVE IMPACTS TO INDUSTRY FROM THE WITHDRAWAL OF 2020 RULE

Time horizon	3% discount rate	7% discount rate
Administrative Costs over 10 years	−$24,800,000	−$21,200,000
Administrative Costs over 20 years	−43,400,000	−32,100,000

ANNUALIZED COSTS OF ADMINISTRATIVE IMPACTS TO INDUSTRY FROM THE WITHDRAWAL OF 2020 RULE

Time horizon	3% discount rate	7% discount rate
Annualized Administrative Costs over 10 years	−$2,820,000	−$2,820,000
Annualized Administrative Cost over 20 years	−$2,830,000	−$2,830,000

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 most innovative and least burdensome tools for achieving regulatory ends. E.O. 13563 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 further emphasizes 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. ONRR developed this final rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* generally requires Federal agencies to prepare a regulatory flexibility analysis for rules that are subject to the notice-and-comment rulemaking requirements under the APA if the rule would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 601–612.

For the changes to 30 CFR part 1206, this final rule would affect lessees of Federal oil and gas leases. For the changes to 30 CFR part 1241, this final rule could affect alleged and actual violators of obligations under Federal and Indian mineral leases. Federal and Indian mineral lessees are, generally, companies classified under the North American Industry Classification System (''NAICS''), as follows:

- Code 2111, Oil and Gas Extraction; and
- Code 21211, Coal Mining.

Under NAICS code classifications, a small company is one with fewer than 500 employees. ONRR estimates that there are approximately 1,208 different lessees that submit royalty reports for Federal oil and gas leases and other Federal mineral leases to ONRR each month. Of these lessees, approximately 106 are not considered small businesses because they exceed the employee count threshold for small businesses. ONRR estimates that the remaining 1,102 lessees have fewer than 500 employees and are therefore considered small businesses.

As stated in the Summary of Royalty Impacts and Costs Table, shown above, this final rule would impact industry through an increase in royalties of approximately $64.6 million per year if the 2020 Rule had gone into effect. This rule causes no financial impact on industry because it is consistent with the 2016 Valuation Rule which is currently operative. Small businesses account for approximately eight percent of those royalties. Applying that percentage, ONRR estimates that this final rule would increase royalty payments made by small-business lessees by approximately $5.2 million per year, or $4,690 per small business, on average. The extent of any royalty impact would vary between lessees due to, for example, differences in the revenues generated by a small business that is subject to royalties.

Also stated above, this final rule would impact industry through a decrease in administrative costs of approximately $2.9 million per year and a first-year increase of $243,000, relative to a baseline in which the 2020 Rule goes into effect. Applying the eight percent small-business share, ONRR estimates that this final rule would decrease administrative costs to small business lessees by approximately $207 per year and by $189 in the first year.

In 2020, ONRR collected $6.3 billion in royalties from Federal oil and gas leases. Applying the eight-percent share, ONRR estimates that small-business lessees paid $504 million in royalties in 2020. Most Federal oil and gas leases have a 12.5 percent royalty rate, resulting in an estimated $4 billion in total small-business lessee revenue from the production and sale of Federal oil and gas ($504 million divided by .125). Thus, on average, ONRR estimates that small-business lessees earn $3.6 million in revenue per year from the production and sale of Federal oil and gas ($4 billion divided by 1,102).

The estimated increase in royalties ($4,690) and decrease in administrative

burden ($207) net to an increase in overall cost to 1,102 small businesses of $4,402 per year. As a percentage of average small-business revenue, this final rule would increase costs to those entities by 0.12 percent ($4,402 divided by $3.6 million).

According to the U.S. Census Bureau's 2017 Economic Census data, oil and gas lessees with 20 employees or less collected $2.1 million per year per entity. Taking the $4,402 discussed above, divided by $2.1 million equals an estimated maximum impact of 0.2 percent of total revenue per year. Further, ONRR anticipates that the smallest entities would realize less of an increase in royalties because, for example, the changes to deepwater gathering and extraordinary processing allowances are capital-intensive operations in which small entities typically do not participate.

In accordance with 5 U.S.C. 605, the head of the agency certifies that this final rule would have an impact on a substantial number of small entities, but the economic impact on those small entities would not be significant under the Regulatory Flexibility Act. Thus, ONRR did not prepare a Regulatory Flexibility Act Analysis nor is a Small Entity Compliance Guide required.

C. Small Business Regulatory Enforcement Fairness Act

The 2020 Rule was not a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804(2). Therefore, this final rule is also not a major rule under 5 U.S.C. 804(2). Like the 2020 Rule, ONRR anticipates that this final rule:

(1) Will not have an annual effect on the economy of $100 million or more. ONRR estimates that, if the 2020 Rule had gone into effect, the cumulative effect on all of industry would have been a reduction in private cost of nearly $61.45 million per year, which is the sum of $64.6 million in decreased royalty payments and $2.85 million in additional costs due to increased administrative burdens. This net change in royalty payments would have been a transfer rather than a cost or cost savings. The Summary of Royalty Impacts and Costs Table, as shown above, demonstrates that this final rule's cumulative economic impact on industry, State and local governments, and the Federal Government is well below the $100 million threshold that the Federal Government uses to define a rule as having a significant impact on the economy;

(2) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Please see the data tables in the Regulatory Planning and Review (E.O. 12866 and E.O. 13563) at Section VI.A.; and

(3) would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. ONRR estimates no significant adverse impacts to small business.

D. Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate or have a significant effect on State, local, or Tribal governments, or on the private sector, of more than $100 million per year. Therefore, ONRR is not required to provide a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*).

E. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this final rule does not have any significant takings implications. This final rule does not impose conditions or limitations on the use of any private property because it applies to the valuation of Federal oil and gas and Federal and Indian coal and to ONRR's civil penalty process. This final rule does not require a takings implication assessment.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The management of Federal oil and gas is the responsibility of the Secretary, and ONRR distributes all of the royalties that it collects under Federal oil and gas leases in accordance with the relevant disbursement statutes. This final rule would not impose administrative costs on States or local governments or substantially and directly affect the relationship between the Federal and State governments. Thus, a Federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This final rule complies with the requirements of E.O. 12988. Specifically, the final rule:

(1) Meets the criteria of Section 3(a), which requires that ONRR review all regulations to eliminate errors and ambiguity to minimize litigation; and

(2) meets the criteria of Section 3(b)(2), which requires that all regulations be written in clear language using clear legal standards.

H. Consultation With Indian Tribal Governments (E.O. 13175)

ONRR strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. ONRR evaluated this final rule under the Department's consultation policy and the criteria in E.O. 13175 and determined that it does not have substantial direct effects on Federally-recognized Indian Tribes. Thus, consultation under ONRR's Tribal consultation policy is not required.

ONRR reached this conclusion, in part, based on the consultations it conducted before the adoption of the 2016 Valuation Rule. At that time, ONRR held six Tribal consultations with the three Tribes (Navajo Nation, Crow Nation, and Hopi Tribe) for which ONRR collected and disbursed Indian coal royalties. Upon the conclusion of each consultation, ONRR and the Tribal partners determined that the 2016 Valuation Rule would not have a substantial impact on any of the represented Tribes. With the exception of the Kayenta Mine located on the lands belonging to the Navajo Nation, which ceased production in 2019, the circumstances relevant to the Indian coal leases have not changed since the prior consultations occurred. As with the 2016 Valuation Rule and the 2020 Rule, ONRR's review of the royalty impact to Tribes from this final rule demonstrates that this final rule will not substantially impact any of the three Tribes. Further, the rule is not estimated to impact the royalty value of Indian coal.

I. Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Certain collections of information require OMB's approval under the Paperwork Reduction Act. This final rule does not require any new or modify any existing information collections that are subject to OMB's approval. Thus, ONRR did not submit any new information collection requests to OMB related to this final rule.

This final rule leaves intact the information collection requirements that OMB previously approved under OMB Control Numbers 1012–0004, 1012–0005, and 1012–0010.

J. National Environmental Policy Act of 1970

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. ONRR is not required to provide a detailed statement under NEPA because this action is categorically excluded under 43 CFR 46.210(c) and (i), as well as the Departmental Manual, part 516, section 15.4.D, which covers: ''(c) Routine financial transactions including such things as . . . audits, fees, bonds, and royalties . . . [and] (i) [p]olicies, directives, regulations, and guidelines . . . [t]hat are of an administrative, financial, legal, technical, or procedural nature.'' This final rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 which require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This final rule is not a significant energy action under the definition in E.O. 13211. It is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Moreover, the Administrator of OIRA has not otherwise designated it as a significant energy action. Therefore, a Statement of Energy Effects pursuant to E.O. 13211 is not required.

L. Clarity of This Regulation

E.O. 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), E.O. 13563 (section 1(a)), and the Presidential Memorandum of June 1, 1998, require ONRR to write all rules in plain language. This means that the rules ONRR publishes must use:

(1) Logical organization.

(2) Active voice to address readers directly.

(3) Clear language rather than jargon.

(4) Short sections and sentences.

(5) Lists and tables wherever possible.

If you believe that ONRR has not met these requirements, send your comments to *ONRR_RegulationsMailbox@onrr.gov.* To better help ONRR understand your comments, please make your comments as specific as possible. For example, you should tell ONRR the numbers of the sections or paragraphs that you think were written unclearly, the sections or sentences that you think are too long and the sections for which you believe lists or tables would have been useful.

M. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* OIRA has determined that this rulemaking is not a major rulemaking, as defined by 5 U.S.C. 804(2), because this rulemaking has not resulted in, and is unlikely to result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

This action is taken pursuant to delegated authority.

Rachael S. Taylor,

Principal Deputy Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2021–20979 Filed 9–28–21; 11:15 am]

BILLING CODE 4335–30–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0760]

RIN 1625–AA87

Security Zones; Corpus Christi Ship Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two 500-yard radius temporary moving security zones around Liquefied Natural Gas Carriers M/V GASLOG WARSAW and M/V CELSIUS CANBERRA within the Corpus Christi Ship Channel and La Quinta Channel. The security zones are needed to protect personnel, vessels, and facilities from sabotage or other subversive acts, accidents, or other events of a similar nature. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice on September 30, 2021. For the purposes of enforcement, actual notice will be used from September 23, 2021, through September 30, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2021–0760 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 Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Anthony.M.Garofalo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Corpus Christi
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. We must establish these security zones by September 23, 2021 to ensure security of personnel, vessels, and facilities from sabotage or other subversive acts, accidents, or other events of a similar nature 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 provide for the security of these vessels, facilities, and personnel.

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 Sector Corpus Christi (COTP) has determined that potential hazards associated with the transit of the Motor Vessel (M/V) GASLOG WARSAW and M/V CELSIUS CANBERRA when loaded will be a security concern for facilities, vessels, and personnel within a 500-yard radius of the vessels. This rule is needed to

ensure security of personnel, vessels, and facilities from sabotage or other subversive acts, accidents, or other events of a similar nature while the vessels are transiting within Corpus Christi, TX, from September 23, 2021 through September 30, 2021.

IV. Discussion of the Rule

The Coast Guard is establishing two 500-yard radius temporary moving security zones around M/V GASLOG WARSAW and M/V CELSIUS CANBERRA. The zones for the vessels will be enforced from the time the first vessel departs loaded on September 23, 2021, until the last vessels departs the Corpus Christi Ship Channel and La Quinta Channel loaded on September 30, 2021. The duration of the zones is intended to protect the personnel, vessels, and facilities from sabotage or other subversive acts, accidents, or other events of a similar nature while the vessels are in transit. No vessel or person will be permitted to enter the security zones without obtaining permission from 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 Corpus Christi. Persons or vessels desiring to enter or pass through this zone must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450. 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 through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for this security zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, duration, and location of the security zones. This rule will impact a small designated area of the Corpus Christi Ship Channel and La Quinta Channel during the vessels' transits while loaded with cargo over a ten-day period. Moreover, the rule allows vessels to seek permission to enter the zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 moving security zones 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 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 security zones lasting for the duration of time that the M/V GASLOG WARSAW

and M/V CELSIUS CANBERRA are within the Corpus Christi Ship Channel and La Quinta Channel while loaded with cargo. It will prohibit entry within a 500 yard radius of the M/V GASLOG WARSAW and M/V CELSIUS CANBERRA while the vessels are transiting loaded within Corpus Christi Ship Channel and La Quinta Channel. It is categorically excluded from further review under L60 in Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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.T08–0760 to read as follows:

§ 165.T08–0760 Security Zone; Corpus Christi Ship Channel. Corpus Christi, TX.

(a) *Location.* The following areas are moving security zones: All navigable waters encompassing a 500-yard radius around each of the following vessels: M/V GASLOG WARSAW and M/V CELSIUS CANBERRA while the vessels are in the Corpus Christi Ship Channel and La Quinta Channel.

(b) *Effective period.* This section is effective without actual notice from September 30, 2021 through September 30, 2021. For the purposes of enforcement, actual notice will be used from September 23, 2021, through September 30, 2021.

(c) *Regulations.* (1) The general regulations in § 165.33 of this part apply. Entry into the zones is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (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 Corpus Christi.

(2) Persons or vessels desiring to enter or pass through the zones must request permission from the COTP Sector Corpus Christi on VHF–FM channel 16 or by telephone at 361–939–0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for these security zones.

Dated: September 23, 2021.

H.C. Govertsen,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2021–21294 Filed 9–29–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0757]

RIN 1625–AA00

Safety Zone; Key West Paddle Classic, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on certain navigable waters surrounding Key West, Florida, during the Key West Paddle Classic event. The safety zone is necessary to ensure the safety of event participants and spectators. Persons and non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Key West or a designated representative.

DATES: This rule is effective from 8 a.m. until 3 p.m. on October 2, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2021–0757 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 Junior Grade Vera Max, Waterways Management Division Chief, Sector Key West, FL, U.S. Coast Guard; telephone (305) 292–8768; e-mail *SKWWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port
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 final 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 and contrary to the public interest. The Coast Guard did not receive necessary information from the event sponsor for this year's event until September 16, 2021. The Coast Guard has an existing safety zone for this event in 33 CFR 165.786, Table to § 165.786, Line No. 4.1; however, the existing regulation only covers the event when it is scheduled on the last weekend of April. There is not sufficient time to publish an NPRM and respond to comments as the event will take place on October 2, 2021.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the event is taking place on October 2, 2021, and immediate action is needed to respond to the potential safety hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The Captain of the Port Key West (COTP) has determined that potential hazards associated with open water swim events will be a safety concern for persons and vessels in the regulated area. This rule is needed to ensure the safety of the event participants, the general public, vessels and the marine environment in the navigable waters within the safety zone during the Key West Paddle Classic paddle board event.

IV. Discussion of the Rule

This rule establishes a moving safety zone on October 2, 2021 for a period of 7 hours, from 8 a.m. to 3 p.m. The moving safety zone will cover all waters within 50 yards in front of the lead safety vessel preceding the first event participants, 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of safety vessels. The event course begins at Higgs Beach in Key West, Florida, moves west to the area offshore of Fort Zach State Park, north through Key West Harbor, east through Fleming Key Cut, south through Cow Key Channel, and west returning back to Higgs Beach. The event is scheduled to take place from 8 a.m. to 3 p.m. Approximately 200 paddle boarders and six safety vessels are anticipated to participate in the event. The zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the event. Persons and non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone without obtaining permission from the COTP Key West or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration and available exceptions to the enforcement of the safety zone. The regulated area will impact small designated areas of the Atlantic Ocean and Gulf of Mexico around Key West, Florida, for only 7 hours and thus is limited in time and scope. Furthermore, the rule will allow vessels to seek permission to enter the zone. Non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by the COTP or a designated representative. Vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from the COTP or a designated representative may operate in the surrounding areas during the 7 hour enforcement period. The Coast Guard will issue a Local Notice to Mariners and a Broadcast Notice to Mariners, allowing mariners to make alternative plans or seek permission to transit the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 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 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. The regulated area will impact small designated areas of the Atlantic Ocean and Gulf of Mexico around Key West, Florida, for only 7 hours and thus is limited in time and scope. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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; 46 U.S.C. 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.T07–0757 to read as follows:

§ 165.T07–0757 Safety Zone; Key West Paddle Classic, Key West, FL.

(a) *Location.* The following regulated area is a moving safety zone: All waters extending 100 yards to either side of the race participants and safety vessels; extending 50 yards in front of the lead safety vessel preceding the first race participants; and extending 50 yards behind the safety vessel trailing the last race participants. The event course begins at Higgs Beach in Key West, Florida, moves west to the area offshore of Fort Zach State Park, north through Key West Harbor, east through Fleming Key Cut, south through Cow Key Channel, and west returning back to Higgs Beach with turnaround point at Alligator Reef Lighthouse.

(b) *Definition.* As used in this section, the term ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Key West (COTP) in the enforcement of the safety zone.

(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 COTP Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Key West by telephone at (305) 292–8772, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM channel 16, or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 8 a.m. until 3 p.m. on October 2, 2021.

Dated: September 24, 2021.

A. Chamie,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2021–21272 Filed 9–29–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0728]

Safety Zone; Rio Vista Bass Derby Fireworks, Sacramento River, Rio Vista, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Rio Vista Bass Derby Fireworks Display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM) or other federal, state, or local law enforcement agencies on scene to assist the Coast Guard in enforcing the regulated area.

DATES: The regulation in 33 CFR 165.1191, will be enforced for the location in Table 1 to § 165.1191, Item number 23, from noon through 9:30 p.m. on October 9, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Anthony Solares, Waterways Management, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone established in 33 CFR 165.1191 Table 1, Item number 23, for the Rio Vista Bass Derby Fireworks Display from noon through 9:30 p.m. on October 9, 2021.

The safety zone will extend to all navigable waters of the Sacramento River, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barge during the loading, transit, and arrival of the fireworks barge from the loading location to the display location and until the start of the fireworks display. From 10:00 a.m. through 4:00 p.m. October 9, 2021, the fireworks barge will load pyrotechnics from the Dutra Group, Oly Yard 615 River Road, Rio Vista, CA. The fireworks barge will remain at the loading location until its transit to the

display location. From 7:45 p.m. to 7:55 p.m. on October 9, 2021 the loaded fireworks barge will transit from the Dutra Group, Oly Yard 615 River Road, Rio Vista, CA to the launch site off of Rio Vista, CA in approximate position 38°09′15.53″ N, 121°41′17.01″ W (NAD 83), where it will remain until the conclusion of the fireworks display. During the 15-minute fireworks display, scheduled to begin at approximately 8:45 p.m. on October 9, 2021, and 30 minutes after the conclusion of the fireworks display, the safety zone will increase in size and encompass all navigable waters of the Sacramento River, from surface to bottom, within a circle formed by connecting all points 1000 feet out from the fireworks barge near Rio Vista, CA in approximate position 38°09′15.53″ N, 121°41′17.01″ W (NAD 83). This safety zone will be enforced from noon until 9:30 p.m. on October 9, 2021, or as announced via Broadcast Notice to Mariners.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM or other Official Patrol defined as a federal, state, or local law enforcement agency on scene to assist the Coast Guard in enforcing the regulated area. Additionally, each person who receives notice of a lawful order or direction issued by the PATCOM or Official Patrol shall obey the order or direction. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: September 23, 2021.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port, Sector San Francisco.

[FR Doc. 2021–21251 Filed 9–29–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0692]

RIN 1625–AA00

Safety Zone; Ocean Cup, Pacific Rum Run, Catalina Island, California

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone near Ship Rock, Catalina Island, in support of the Ocean Cup Pacific Rum Run. This action is necessary to protect the area near Ship Rock, Catalina Island, public vessels, and the high speed vessels participating in the event. This regulation would prohibit vessels from entering into, transiting through, or remaining within the designated area unless specifically authorized by the Captain of the Port, Los Angeles—Long Beach, or her designated representative.

DATES: This rule is effective from 7 a.m. to 10 a.m. on October 1, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0692 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 LCDR Maria Wiener, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 521–3860, email *D11-SMB-SectorLALB-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
LLNR Light List Number
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Pacific Rum Run race is the fifth race planned as part of the Ocean Cup Over the Horizon World Speed Record Series. The racecourse begins off Huntington Beach Pier, proceeds to Ship Rock and circumnavigates Catalina Island back to Ship Rock, and returns to the finish at the Huntington Beach Pier. The Captain of the Port (COTP), Los Angeles—Long Beach has determined that potential hazards associated with event safety may arise due to the expected high concentration of vessels in the general area along with the high-speed race vessels. For these reasons the Coast Guard believes that a safety zone is necessary to ensure the safety of, and reduce the risk to, the public, and mariners around Catalina Island.

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 did not receive final details for this event until August 25, 2021. There was insufficient time to undergo the full rulemaking process, including providing a reasonable comment period and considering those comments, because the Coast Guard must establish this temporary safety zone by September 30, 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 immediate action is needed to address potentially hazardous conditions associated with high-speed maneuvers from aircraft and waterborne vessels for a search and rescue demonstration.

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), Los Angeles—Long Beach has determined that potential hazards associated with event safety may arise due to the expected high concentration of vessels in the general area along with the high-speed race vessels. The purpose of this rule is to ensure the safety of, and reduce the risk to, the public, and mariners around Catalina Island before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. to 10 a.m. on October 1, 2021. The safety zone would encompass all navigable waters from the surface to the sea floor consisting of a line connecting the following coordinates: 33°27′38″ N, 118°30′09″ W, 33°27′51″ N, 118°29′53″ W 33°27′34″ N, 118°28′54″, 33°27′12″ N, 118°29′17″ W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled race. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 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), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. Commercial vessel traffic will be able to safely transit through this safety zone, with coordination by the Captain of the Port or their designated representative. The Coast Guard and Vessel Traffic Service/Marine Exchange will coordinate and mitigate all inbound and outbound commercial traffic movements through the race course. Recreational traffic will be able to transit around this safety zone, which is near the Two Harbors, Catalina entrance.

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. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 and Commandant Instruction M16475.1D, 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 encompassing an area near Ship Rock, Catalina Island for the Ocean Cup Pacific Rum Run. It is categorically excluded from further review under paragraph 60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T11–065 to read as follows:

§ 165.T11–065 Safety Zone; Ocean Cup, The Pacific Rum Run, Catalina, California.

(a) *Location.* The following area is a safety zone: All navigable waters from the surface to the sea floor consisting of a line connecting the following coordinates: 33°27′38″ N, 118°30′09″ W, 33°27′51″ N, 118°29′53″ W 33°27′34″ N, 118°28′54″, 33°27′12″ N, 118°29′17″ W. All coordinates displayed are referenced by North American Datum of 1983, World Geodetic System, 1984.

(b) *Definitions.* For the purposes of this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Los Angeles—Long Beach (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) During the enforcement period, vessels and persons are prohibited from entering into, transiting through, or remaining within the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port or her designated representative.

(2) To seek permission to enter, hail Coast Guard Sector Los Angeles—Long Beach on VHF–FM Channel 16 or call at (310) 521–3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Notification.* Coast Guard Sector Los Angeles—Long Beach will use all appropriate means to notify the public in advance of an event of the enforcement of this safety zone to include publishing a Notice of Enforcement in the **Federal Register** and through the Local Notice to Mariners and Broadcast Notice to Mariners.

(e) *Enforcement period.* This safety zone will be enforced from 7 a.m. to 10 a.m. on October 1, 2021.

Dated: September 23, 2021.

R.E. Ore,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles Long Beach.

[FR Doc. 2021–21163 Filed 9–29–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0691]

RIN 1625–AA00

Safety Zone; Pacific Airshow Huntington Beach, California

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a safety zone offshore of Huntington Beach, CA, in support of the Pacific Airshow. This action is necessary to provide for the safety of life on these navigable waters in the area of the Coast Guard air and water demonstration and to protect the high concentration of people attending the event. This regulation prohibits vessels from entering into, transiting through, or remaining within the designated area unless specifically authorized by the Captain of the Port, Sector Los Angeles—Long Beach (COTP), or a designated representative.

DATES: This rule is effective from 7 a.m. on September 30, 2021, through 5 p.m. on October 3, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2021–0691 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Maria Wiener, U.S. Coast Guard Sector Los Angeles—Long Beach; *telephone* (310) 521–3860, *email D11-SMB-SectorLALB-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until August 25, 2021. There was insufficient time to undergo the full rulemaking process, including providing a reasonable comment period and considering those comments, because the Coast Guard must establish this temporary safety zone by September 30, 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 immediate action is needed to address potentially hazardous conditions associated with high-speed maneuvers from aircraft and waterborne vessels for a search and rescue demonstration.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U. S. C. 70034. The COTP has determined that potential hazards associated with this event. The sponsor will be conducting an air show in vicinity of the Huntington Beach Pier, for a period of four days. This air show will consist of numerous military and civilian aircraft performing aerobatic maneuvers at high speed within the lateral limits of an aerobatic box that would extend from the surface of the water to 15,000 feet above mean sea level (MSL). The event at Huntington Beach generates over 800 spectator craft in attendance each year. The COTP has determined that potential hazards associated with navigation safety may arise due to multiple low flying aircraft flight paths and stunt performances over the waters off Huntington Beach. This

safety zone is necessary to ensure the safety of, and reduce the risk to, the public, and mariners, in the vicinity of the aerobatic performance.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. on September 30, 2021, through 5 p.m. on October 3, 2021. Based on the safety risks described above, the Coast Guard is establishing a safety zone in the vicinity of the Huntington Beach Pier during the Great Pacific Airshow event. The safety zone will encompass all navigable waters from the surface to the sea floor in an area bound by the following coordinates: 33°38.387′ N; 117°58.847′ W, 33°37.992′ N; 117°59.204′ W, 33°39.625′ N; 118°1.806′ W, 33°40.019′ N; 118°1.449′ W. All coordinates displayed are referenced by North American Datum of 1983, World Geodetic System, 1984.

During the enforcement period, vessels are prohibited from entering into, transiting through, or remaining within the designated area unless authorized by the COTP or her designated representative. General boating public will be notified prior to the enforcement of the safety zone via Broadcast Notice to Mariners. No vessel or person is permitted to operate in the safety zone without obtaining permission from COTP or the COTP's designated representative. A designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the security zone. To seek permission to enter, hail Coast Guard Sector Los Angeles—Long Beach on VHF–FM Channel 16 or 310–521–3801. Upon being hailed by a Coast Guard vessel or designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

The general boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The size of the zone is the minimum necessary to provide adequate protection for the waterways users, adjoining areas, and the public. The zone will be in place during the scheduled times of 7:00 a.m. to 5:00 p.m. Commercial vessel traffic will in no way be affected by the establishment of the safety zone due to its overall proximity to the shore.

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 Management Directive 023–01 and 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 encompassing an area in vicinity

of Huntington Beach and the Huntington Beach Pier. Normally such actions are categorically excluded from further review under paragraph L60(a), in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. An environmental analysis and checklist supporting this determination and Record of Environmental Consideration (REC) are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

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. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T11–064 to read as follows:

§ 165.T11–064 Safety Zone; Pacific Airshow Huntington Beach, California.

(a) *Location.* The following area is a safety zone: All navigable waters from the surface to the sea floor consisting of a line connecting the following coordinates: 33°38.387′ N; 117°58.847′ W, 33°37.992′ N; 117°59.204′ W, 33°39.625′ N; 118°1.806′ W, 33°40.019′ N; 118°1.449′ W. All coordinates displayed are referenced by North American Datum of 1983, World Geodetic System, 1984.

(b) *Definitions.* For the purposes of this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Los Sector Angeles-Long Beach (COTP) in the enforcement of the security zone.

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

(2) To seek permission to enter, hail Coast Guard Sector Los Angeles—Long Beach on VHF–FM Channel 16 or call at (310) 521–3801. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) Upon being hailed by the COTP's designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(d) *Enforcement period.* The temporary safety zone will be enforced from 7 a.m. to 5 p.m. each day from September 30, 2021, to October 3, 2021.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone via Local Notices to Mariners.

Dated: September 23, 2021.

R.E. Ore,

Captain, U.S. Coast Guard, Captain of the Port Sector Los Angeles—Long Beach.

[FR Doc. 2021–21161 Filed 9–29–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0766]

RIN 1625–AA00

Safety Zone; Pier 27 Fireworks Display, San Francisco, CA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Francisco Bay near Pier 27 in support of a fireworks display on October 1, 2021. The safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 9:00 a.m. until 10:30 p.m. on October 1, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0766 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade, William Harris, Waterways Management, U.S. Coast Guard; telephone (415) 399–7443, email *SFWaterways@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 did not receive final details for this event until September 20, 2021. It is impracticable to go through the full notice and comment rule making process because the Coast Guard must establish this safety zone by October 1, 2021, and lacks sufficient time to provide a reasonable comment period and to 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 public interest because immediate action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards associated with

the fireworks display near Pier 27 in the San Francisco Bay on October 1, 2021.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco (COTP) has determined that potential hazards associated with the Pier 27 Fireworks Display on October 1, 2021, will be a safety concern for anyone within a 100-foot radius of the fireworks barge during loading and staging, and anyone within a 500-foot radius of the fireworks barge starting 30 minutes before the fireworks display is scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around the fireworks barge and during the fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 9:00 a.m. until 10:30 p.m. on October 1, 2021, during the loading, staging, and transit of the fireworks barge in San Francisco Bay near Pier 27, San Francisco, CA, and until 30 minutes after completion of the fireworks display. During the loading, staging, and transit of the fireworks barge scheduled to take place between 9:00 a.m. and 9:20 p.m. on October 1, 2021, until 30 minutes prior to the start of the fireworks display, the safety zone will encompass the navigable waters around and under the fireworks barge, from surface to bottom, within a circle formed by connection of all points 100 feet out from the fireworks barge. Loading the pyrotechnics onto the fireworks barge is scheduled from 10 a.m. to 4 p.m. on October 1, 2021, at Pier 50 in San Francisco, CA.

The fireworks barge will remain at Pier 50 until the start of its transit to the display location. Towing of the barge from Pier 50 to the display location is scheduled to take place from 9:00 p.m. to 9:15 p.m. on October 1, 2021, where it will remain until the conclusion of the fireworks display.

At 9:20 p.m. on October 1, 2021, 30 minutes prior to the commencement of the 10-minute fireworks display, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge, from surface to bottom, within a circle formed by all connecting points 500 feet from the circle center at approximate position 37°48′23.0″ N, 122°23′51.1″ W (NAD 83). The safety zone will terminate at 10:30 p.m. on October 1, 2021, or as announced via Broadcast Notice to Mariners.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the fireworks loading, staging, transit, and display site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted area. A ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone. This regulation is necessary to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterways users will be notified to ensure the safety zone will result in minimum impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone in the navigable waters around the loading, staging, transit, and display of fireworks near Pier 50 and Pier 27 in San Francisco Bay. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T11–067 to read as follows:

§ 165.T11–067 Safety Zone; Pier 27 Fireworks Display, San Francisco Bay, San Francisco, CA.

(a) *Location.* The following area is a safety zone: all navigable waters of San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barge during loading and staging at Pier 50 in San Francisco, as well as transit and arrival at Pier 27, San Francisco, CA. Between 9:20 p.m. and 10:30 p.m. on October 1, 2021, the safety zone will expand to all navigable waters, from surface to bottom, within a circle formed by connection all points 500 feet out from the fireworks barge in approximate position 37°48′23.0″ N, 122°23′51.1″ W (NAD 83) or as announced via Broadcast Notice to Mariners.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or Local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

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

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced from 9 a.m. until 10:30 p.m. on October 1, 2021.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with § 165.7.

Dated: September 22, 2021.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. 2021–21098 Filed 9–29–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AQ71

Schedule for Rating Disabilities; The Genitourinary Diseases and Conditions

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD) by revising the portion of the schedule that addresses the genitourinary system. This action ensures that the rating schedule uses current medical terminology and provides detailed and updated criteria for evaluation of genitourinary conditions for disability rating purposes.

DATES: This final rule is effective November 14, 2021.

FOR FURTHER INFORMATION CONTACT: Ioulia Vvedenskaya, M.D., M.B.A., Medical Officer, VASRD Program Office (210), Compensation Service (21C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9752. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On October 15, 2019, VA published the proposed rule for Schedule of Rating Disabilities; The Genitourinary Diseases and Conditions in the **Federal Register**. *See* 84 FR 55086. VA received 12 comments during the 60-day comment period. VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted as a final rule with minor changes noted below.

I. Comments of General Support

One commenter welcomed the proposed changes to 38 CFR 4.115a, including the replacement of a vague term (''intermittent intensive management'') with a more specific reference (''suppressive drug therapy'') in the urinary tract infection (UTI) criteria. The commenter supported VA's proposal to eliminate subjective terms such as ''markedly,'' ''some,'' and ''slight'' in the renal dysfunction criteria and to replace them with specific, objective laboratory findings, such as the glomerular filtration rate (GFR) and albumin/creatinine ratio (ACR). The commenter noted that these revisions will likely result in a more efficient application of the rating schedule of disabilities and will benefit many veterans with kidney diseases. VA appreciates the commenter's support and makes no changes based on this comment.

Another commenter supported VA's proposal to update medical terminology and 38 CFR 4.115a. The commenter noted that the proposed changes include more specific, objective laboratory findings such as GFR. The commenter also noted that the National Kidney Foundation indicated that an estimated glomerular filtration (eGFR) is the best test to measure the level of kidney function and to determine the stage of the kidney disease. VA appreciates the commenter's support and makes no changes based on this comment.

II. Comments Regarding 38 CFR 4.115a

One commenter expressed an opinion that the GFR values in a previously proposed rule, which was published on July 28, 2017, are more in line with National Kidney Foundation standards. *See* 82 FR 35140. However, that July 2017 proposal was formally withdrawn through notice published in the **Federal Register** on March 5, 2019. *See* 84 FR 7844. Although the commenter asserted that the July 2017 proposal's GFR values more accurately reflected disease progression, VA found during its internal review that the renal dysfunction rating criteria proposed in July 2017 contained erroneous values and units of measure for ACR and GFR. These erroneous proposed values were not in line with the National Kidney Foundation guidelines and would have resulted in erroneous disability evaluations for multiple renal disabilities. In contrast, the October 2019 proposed rule cited corrected GFR values aligned with the National Kidney Foundation's definition and classification of chronic kidney disease. Nat'l Kidney Found., ''KDIGO 2012 Clinical Practice Guideline for the Evaluation and Management of Chronic Kidney Disease,'' 3(1) Kidney Int'l Suppl. 5 (Jan. 2013), available at *https://kdigo.org/wp-content/uploads/2017/02/KDIGO_2012_CKD_GL.pdf* (last viewed May 15, 2020) [hereinafter ''KDIGO'']. Therefore, VA makes no changes based on this comment.

Another commenter stated that a recent study showed that an overestimation of renal function was correlated with patients' post-amputation status. The commenter stated that this study suggested that a cystatin C test would be a more accurate measure of kidney function in patients who have had amputations. According to the National Kidney Foundation, a blood test for cystatin C can be helpful in some instances, but it is not the usual or regular way to estimate a GFR. National Kidney Foundation, ''Cystatin C,'' *https://www.kidney.org/atoz/content/cystatinC* (last viewed May 15, 2020). A recently published study examined the accuracy of kidney function estimates when prescribing renally-eliminated medications in non-traumatic amputees. Aakjaer et al., ''Differences in Kidney Function Estimates Based on Creatinine and/or Cystatin C in Non-Traumatic Amputation Patients and Their Impact on Drug Prescribing,'' 8(1) J Clin Med. 89 (2019), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6351924/* (last viewed May 15, 2020). The conclusions of this study highlighted the fact that a non-traumatic amputation of a lower extremity has a significant effect on both eGFR and cystatin C. Furthermore, there are significant differences between eGFR and cystatin C (both before and after amputation) and these differences impact how renally-eliminated medications should be prescribed. VA appreciates this comment. However, the VA rating schedule for disabilities is not used for diagnosis and treatment of medical conditions; it is used to evaluate disabilities in accord with average earnings loss. VA has determined that, for VA disability evaluation purposes, GFR, eGFR, and ACR values present adequate measurements of functional impairment due to kidney disease. VA makes no changes based on this comment.

Another commenter disagreed with the changes made in 38 CFR 4.115a by stating that decreasing the required GFR for the 80, 60 and 30 percent rating criteria would disqualify many veterans with chronic kidney disease from future increases in their disability rating if their conditions worsen. However, VA did not propose a decrease in GFR values; rather, VA replaced subjective terms such as ''markedly,'' ''some,'' and ''slight'' in the current evaluation criteria with specific, objective laboratory findings, such as GFR and ACR. To the extent that the comment was intended to suggest that VA should use the GFR values in the proposed rule published in July 2017 and later withdrawn, VA has determined, as stated above, that the GFR values proposed in October 2019 are more accurate and better aligned with the National Kidney Foundation's definition and classification of chronic kidney disease. VA makes no changes based on this comment.

The same commenter was concerned that, under the proposed GFR values, a veteran would have to be at the point of getting a kidney transplant in order to reach an 80 percent disability evaluation. VA proposed an 80 percent evaluation for individuals with a GFR between 15 and 29 mL/min/1.73 m^2 for at least three consecutive months. This aligned VA's functional impairment evaluation with the most current clinical guidelines. Nat'l Kidney Found., ''Managing Your Adult Patients Who Have a Kidney Transplant,'' at 2 (2011), available at *https://www.kidney.org/sites/default/files/02-50-4079_ABB_ManagingTransRecipBk_PC.pdf* (last viewed May 15, 2020) [hereinafter ''Managing'']. According to the National Kidney Foundation guidelines, only patients with kidney failure (GFR value <15 or dialysis) are considered for kidney replacement therapy (kidney transplant). *Id.* For patients with severely decreased kidney function (GFR between 15 and 29 mL/min/1.73 m^2), a referral to a nephrologist for evaluation of chronic kidney disease progression is recommended. *Id.* Such evaluation would include a range of activities in preparation for kidney replacement therapy such as patient and family education, dialysis access, and preemptive transplant. *Id.* VA makes no changes based on this comment.

Another commenter referenced a study that showed a link between kidney disease and/or kidney failure and prolonged use of proton pump inhibitors such as Prilosec and Nexium. The commenter suggested that the overuse and/or prolonged use of proton pump inhibitors during military service and the medications' side effects should be included in the schedule for rating disabilities. VA appreciates this comment. The comment appears directed more toward establishment of service connection for a condition resulting in disability than to rating the level of disability attributable to the

condition. Nonetheless, to ensure that the full range of relevant factors is adequately addressed, VA intends to establish a work group that will consider this issue at a future time. Upon consideration and assessment of the work group's findings, VA will determine whether any additional amendments to the criteria are necessary; if so, they would be addressed in a future proposal. At this time, however, VA makes no changes based on this comment.

Another commenter expressed concern that the proposed rule did not make clear how the stages of chronic kidney disease (CKD) translate into the proposed rating criteria for renal disfunction. To be clear, VA proposed 100, 80, 60, 30, and 0 percent evaluations based on the stages of CKD according to most current clinical guidelines, specifically, those of the National Kidney Foundation. *See* KDIGO at 8. The National Kidney Foundation guidelines distinguish between patients with kidney failure (that is, GFR value <15 or dialysis), severely decreased kidney function (GFR value 15 to 29), moderately to severely decreased kidney function (GFR value 30 to 44), mildly to moderately decreased kidney function (GFR value 45 to 59), and mildly decreased kidney function (GFR value 60 to 89). *Id.* VA's proposed (and now final) rating criteria for renal dysfunction provide the same staging. VA makes no changes based on this comment.

Another commenter welcomed VA's decision to base its disability evaluations for renal dysfunction on GFR and ACR laboratory findings, but was concerned that VA would use only these laboratory findings without taking into consideration other available evidence in the claims file. By law, VA must consider all available evidence when determining whether the criteria for a particular a disability evaluation are met. 38 U.S.C. 5107(b). As noted above, the GFR and ACR laboratory findings are an objective, accurate, and standard method for measuring renal dysfunction. Other relevant evidence in the claims file may implicate broader issues such as separate ratings or secondary service connection in a given case but, for the renal dysfunction rating specifically, the GFR and ACR laboratory findings will govern. VA makes no changes based on this comment.

The same commenter referenced a National Institutes of Health (NIH) study and alleged that renal dysfunction due to cold injury-related venous congestion cannot be rated based on GFR values. VA disagrees. The NIH report does not appear to make such an allegation; indeed, it used GFR values to measure renal impairment. Mullens et al., ''Importance of Venous Congestion for Worsening of Renal Function in Advanced Decompensated Heart Failure,'' 53(7) J Am Coll Cardiol. 589–596 (2009), available at *https://pubmed.ncbi.nlm.nih.gov/19215833/* (last visited May 19, 2020). According to the National Kidney Foundation, GFR is widely accepted as the best overall index of kidney function, KDIGO at 19, and the commenter does not appear to present an alternative measure. VA makes no changes based on this comment.

The same commenter stated that basing the renal dysfunction rating on GFR values would exclude combat veterans with warm water immersion foot and paddy foot injuries from receiving VA disability compensation. VA disagrees. To the extent that these injuries cause renal dysfunction, that dysfunction can be measured through GFR, and compensation can be provided based on the GFR value. VA makes no changes based on this comment.

The same commenter proposed the addition of new diagnostic codes for kidney dysfunction due to the warm water immersion foot and paddy foot injuries. VA appreciates this comment. To ensure that the full range of relevant factors is adequately addressed, VA intends to establish a work group that will consider this issue at a future time. Upon consideration and assessment of the work group's findings, VA will determine whether any additional amendments to the criteria are necessary; if so, they would be addressed in a future proposal. At this time, however, VA makes no changes based on this comment.

Based on its internal review, however, VA makes one change to the general rating formula for renal dysfunction: Adding the word ''eligible'' to the 100 percent evaluation that describes a kidney transplant recipient. This addition is made to ensure that all veterans with service-connected renal disease who are eligible to receive a kidney transplant will be entitled to a 100 percent evaluation as soon as they are deemed eligible for a kidney transplant, whether or not the transplant has been scheduled.

III. Comments Regarding Diagnostic Codes 7520 Through 7522

VA received several comments regarding the proposed changes to DCs 7520 through 7522, which address removal and deformity of the penis.

One commenter asked VA to provide a rationale for its decision to remove the ability to rate the removal of the penis or glans as voiding dysfunction. Under most circumstances, the removal of the penis or glans does not result in voiding dysfunction. Most commonly, the loss of penis or glans will affect the ability to void while standing, which is not considered a compensable functional impairment under the criteria for voiding dysfunction in 38 CFR 4.115a. Santucci et al., ''Penile Fracture and Trauma,'' Medscape (updated 2019), *https://emedicine.medscape.com/article/456305-overview* (last visited May 15, 2020). Furthermore, if, in the course of penis or glans surgical removal, there is associated urethral trauma resulting in voiding dysfunction, it should be separately rated under DC 7518, which addresses the stricture of the urethra. For these reasons, VA does not find it appropriate to direct rating personnel to reference the voiding dysfunction criteria of 38 CFR 4.115a when evaluating DCs 7520 and 7521. VA therefore makes no changes based on this comment.

The same commenter recognized that erectile dysfunction alone may not equate to a reduction in earning capacity, but nevertheless asserted that VA should acknowledge that erectile dysfunction could lead to mental distress, such as depression and anxiety, and could impact a veteran's ability to work. The commenter recommended that VA grant compensation for any secondary condition that is related to erectile dysfunction that causes a reduction in earning capacity. VA agrees with the commenter's assessment that a mental disorder related to service-connected erectile dysfunction could warrant secondary service connection. That mental disorder would require its own diagnosis, service connection, and a disability evaluation under 38 CFR 4.130, which governs ratings for mental disorders. VA already recognizes this concept in 38 CFR 3.310(a), which directs that any disability which is proximately due to or the result of a service-connected disability shall be service connected. VA makes no changes based on this comment.

Another commenter disagreed with the proposed changes to DC 7522, which addresses erectile dysfunction and penile deformity. The commenter expressed concern that, by removing a compensable evaluation for penis deformity, VA will unreasonably deprive certain veterans of benefits, specifically, veterans with Peyronie's disease. The commenter listed several signs and symptoms of Peyronie's disease to include scar tissue, a

significant bend to the penis, erection problems, shortening of the penis, pain with or without erection, and mental health disorders due to stress and anxiety. The commenter indicated that the severity of the overall impact of Peyronie's disease on male veterans is evidenced by the prevalence of mental health disorders associated with it. The commenter expressed an opinion that the functional impairment due to Peyronie's disease affects veterans' ability to function under the ordinary conditions of life and work. Additionally, the commenter stated that, though disabilities relating to creative organs may not affect earning capacity directly, they impact non-economic factors such as personal inconvenience, social inadaptability, or psychological factors. The commenter proposed the addition of a diagnostic code and specific rating criteria for Peyronie's disease, including penile deformity and pain.

Moreover, two commenters asked VA to provide a rationale for its decision to exclude Peyronie's disease from ratable conditions. The commenters expressed concern that Peyronie's disease may be caused by trauma as a result of an in-service injury and, in some cases, prevent a veteran from having sexual intercourse or make it difficult to get or maintain an erection.

Peyronie's disease is typically associated with painful erections or intercourse or a curve in the penis that prevents sexual intercourse. According to the NIH, and based on studies of men who reported having symptoms of Peyronie's disease, researchers estimate that Peyronie's disease affects more than one in 10 men. ''Penile Curvature (Peyronie's Disease),'' National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), NIH, *https://www.niddk.nih.gov/health-information/urologic-diseases/penile-curvature-peyronies-disease* (last viewed May 15, 2020). The etiology of Peyronie's disease remains partially understood. More recently, Peyronie's disease has been thought to result from vascular trauma or injury to the penis that causes scarring and deformity of the penis. Lizza et al., ''Peyronie's Disease,'' Medscape (2018), *https://emedicine.medscape.com/article/456574-overview#a7* (last visited May 15, 2020).

VA agrees with the commenters that penile trauma as a result of an in-service injury should be recognized under DC 7522. Accordingly, VA in this final rule is adding a note under DC 7522 to clarify how rating personnel should evaluate disabling effects of penile trauma or disease, to include Peyronie's disease. The note states that, for the purpose of VA disability evaluation, a disease or traumatic injury of the penis resulting in scarring or deformity shall be rated under DC 7522. With this clarification, VA ensures that a traumatic injury or disease of the penis will be recognized by the VASRD. VA would review any mental health disorders associated with erectile dysfunction or Peyronie's disease under 38 CFR 4.125, 4.126, and 4.130. Furthermore, DC 7522's footnote regarding consideration of special monthly compensation for loss of use of a creative organ, where warranted, will apply for both erectile dysfunction or Peyronie's disease.

Nevertheless, as noted in the preamble to the proposed rule, VA provides disability compensation for conditions based on the average impairment of earning capacity pursuant to 38 U.S.C. 1155. Erectile dysfunction, with or without penile deformity, is not associated directly with reductions in earning capacity, which is why VA proposed to provide a noncompensable evaluation for erectile dysfunction under DC 7522. Similarly, the potentially painful erections and intercourse associated with Peyronie's disease do not, on average, impair earning capacity at a compensable level. To the extent these conditions impact social or psychological factors, VA has a variety of mental health and counseling services available for service-connected veterans. But the law specifically links disability compensation to impairment of earning capacity. 38 U.S.C. 1155. VA thanks the commenters for their input.

IV. Comments Regarding Diagnostic Code 7542

One commenter expressed concern with VA's proposal to rate neurogenic bladder as voiding dysfunction or urinary tract infection, whichever is predominant. The commenter asserted that VA would fail to adequately compensate a veteran who suffers from both effects. Historically, 38 CFR 4.115a has recognized that ''[d]iseases of the genitourinary system generally result in disabilities related to renal or voiding dysfunctions, infections, or a combination of these.'' Further, § 4.115a directs rating personnel to evaluate such disabilities on the ''predominant area of dysfunction.'' VA's proposal for DC 7542 to evaluate neurogenic bladder conditions based on voiding dysfunction or urinary tract infection mirrors the instructions in § 4.115a, which instruct that only the predominant area of dysfunction shall be considered when evaluating genitourinary conditions. Moreover, § 4.14 directs that the evaluation of the same disability under various diagnoses is to be avoided. Both urinary tract infections and voiding dysfunctions affect urinary tract functioning, specifically, urination. Consequently, these dysfunctions do not lend themselves to distinct and separate disability evaluations without violating the fundamental principle relating to pyramiding as outlined in § 4.14. VA declines to make any changes based on this comment.

V. Comments Regarding Diagnostic Code 7543

One commenter expressed concern that the noncompensable disability rating for varicocele and hydrocele under proposed DC 7543 does not provide proper compensation for individuals with severe cases of varicocele or hydrocele that result in acute pain during walking or driving. The commenter suggested a 10 percent disability rating for such severe cases of varicocele or hydrocele. However, the evidence indicates that varicoceles are often asymptomatic and hydroceles are usually painless and disappear without treatment. *See* Junnile, J. and Lassen, P., ''Testicular Masses,'' 57(4) Am Fam Physician 685–692 (1998), available at *https://www.aafp.org/afp/1998/0215/p685.html* (last viewed May 15, 2020). While these conditions may cause a decrease in fertility, or the existence of infertility, neither cause a reduction in earning capacity that would warrant a compensable rating. However, where varicocele or hydrocele causes pain that necessitates surgery, a rating under an appropriate diagnostic code may be available for post-surgery residuals. Also, in any instance in which a veteran has loss of use of a creative organ due to a service-connected condition, VA provides special monthly compensation for this functional loss. *See* 38 CFR 3.350(a). VA makes no changes based on these comments.

VI. Comments Beyond the Scope of This Rulemaking

One commenter stated that many combat veterans are unknowingly and silently enduring cold injury kidney dysfunction, and VA neglected to notify 1.7 million combat veterans of the long-term sequelae of warm water immersion foot injuries. These aspects of the comment relate to notice and education for veterans, not the rating criteria used in the evaluation of service-connected genitourinary conditions. Therefore, these issues are not within the scope of this rulemaking. VA makes no changes based on these comments.

The same commenter stated that physicians at VA medical centers do not know and have no reasonable means to ascertain information related to the disability rating criteria associated with immersion foot injuries and related kidney dysfunction, in order to properly treat disabled veterans. Furthermore, the commenter discussed in detail his medical conditions and claims' adjudication process. VA appreciates these comments; however, the comments relate to diagnosis and treatment of cardiovascular and renal conditions rather than disability evaluations in the rating schedule. Therefore, these issues are not within the scope of this rulemaking. VA makes no changes based on these comments.

VII. Proposed Changes to § 4.115

In its proposed rule, VA deemed the first three sentences of § 4.115 unnecessary and proposed to remove them. However, during its internal review and additional considerations of such removal, VA realized that further study of this action is warranted to account for complex relationships between cardiovascular and genitourinary disabilities.

Currently, VA does not assign separate evaluations for heart disease and any form of nephritis due to its close interrelationship with cardiovascular disabilities. However, VA can separately evaluate non-nephritis renal disease and cardiovascular disease (*e.g.,* diabetic nephropathy and coronary artery disease) when complications do not overlap.

VA proposed new terminology for § 4.115, but did not clearly define renal disease and its relationship with cardiovascular conditions. Thus, if the proposed changes were to be made effective, they might be interpreted as precluding separate evaluations for non-nephritis renal disease and cardiovascular disabilities. This was not an intended consequence of this rulemaking, and would be disadvantageous to veterans who suffer from service-connected renal and cardiovascular conditions.

Therefore, VA withdraws its proposal to revise § 4.115. VA will review and update § 4.115 during its next revision of the VA Rating Schedule for Disabilities.

VII. Technical Correction

In the proposed rule, VA updated its general rating formula for renal dysfunction by replacing subjective criteria with specific, objective laboratory findings, such as the GFR and ACR. Upon further review, VA realized that it inadvertently omitted a reference to the period of evaluation for the GFR and ACR values. VA makes a clarifying change in the text for the 100, 80, 60, 30, and 0 percent disability evaluations by adding the reference ''during the past 12 months'' to ''Chronic kidney disease with GFR . . . for at least 3 consecutive months.'' This change to the language does not result to any substantive changes to the criteria in the general rating formula for renal dysfunction.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov*.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The certification is based on the fact that small entities or businesses are not affected by revisions to the VASRD. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles affected by this document are 64.009, Veterans Medical Care Benefits; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.109, Veterans Compensation for Service-Connected Disability.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on June 22, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble of this rule and the proposed rule, the Department of Veterans Affairs amends 38 CFR part 4 as follows:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

■ 2. Amend § 4.115a by revising the introductory text and the table entries for ''Renal dysfunction'' and ''Urinary tract infection'' to read as follows:

§ 4.115a Ratings of the genitourinary system—dysfunctions.

Diseases of the genitourinary system generally result in disabilities related to renal or voiding dysfunctions, infections, or a combination of these. The following section provides descriptions of various levels of disability in each of these symptom

areas. Where diagnostic codes refer the decision maker to these specific areas of dysfunction, only the predominant area of dysfunction shall be considered for rating purposes. Distinct disabilities may be evaluated separately under this section, pursuant to § 4.14, if the symptoms do not overlap. Since the areas of dysfunction described below do not cover all symptoms resulting from genitourinary diseases, specific diagnoses may include a description of symptoms assigned to that diagnosis.

	Rating
Renal dysfunction:	
Chronic kidney disease with glomerular filtration rate (GFR) less than 15 mL/min/1.73 m^2 for at least 3 consecutive months during the past 12 months; or requiring regular routine dialysis; or eligible kidney transplant recipient	100
Chronic kidney disease with GFR from 15 to 29 mL/min/1.73 m^2 for at least 3 consecutive months during the past 12 months	80
Chronic kidney disease with GFR from 30 to 44 mL/min/1.73 m^2 for at least 3 consecutive months during the past 12 months	60
Chronic kidney disease with GFR from 45 to 59 mL/min/1.73 m^2 for at least 3 consecutive months during the past 12 months	30
GFR from 60 to 89 mL/min/1.73 m^2 and either recurrent red blood cell (RBC) casts, white blood cell (WBC) casts, or granular casts for at least 3 consecutive months during the past 12 months; or GFR from 60 to 89 mL/min/1.73 m^2 and structural kidney abnormalities (cystic, obstructive, or glomerular) for at least 3 consecutive months during the past 12 months; or GFR from 60 to 89 mL/min/1.73 m^2 and albumin/creatinine ratio (ACR) ≥30 mg/g for at least 3 consecutive months during the past 12 months	0
Note: GFR, estimated GFR (eGFR), and creatinine-based approximations of GFR will be accepted for evaluation purposes under this section when determined to be appropriate and calculated by a medical professional.	
* * * * * * *	
Urinary tract infection:	
Poor renal function: Rate as renal dysfunction.	
Recurrent symptomatic infection requiring drainage by stent or nephrostomy tube; or requiring greater than 2 hospitalizations per year; or requiring continuous intensive management	30
Recurrent symptomatic infection requiring 1–2 hospitalizations per year or suppressive drug therapy lasting six months or longer	10
Recurrent symptomatic infection not requiring hospitalization, but requiring suppressive drug therapy for less than 6 months	0

■ 3. Amend § 4.115b by:
■ a. Revising the entry for diagnostic code 7508;
■ b. Removing the entry for diagnostic code 7510;
■ c. Revising the entries for diagnostic codes 7520, 7521, 7522, 7524, 7525, 7527, 7533, 7534, 7537, 7539, 7541, and 7542; and
■ d. Adding entries in numerical order for diagnostic codes 7543, 7544, and 7545.

The revisions and additions read as follows:

§ 4.115b Ratings of the genitourinary system—diagnoses.

	Rating
* * * * * * *	
7508 Nephrolithiasis/Ureterolithiasis/Nephrocalcinosis:	
Rate as hydronephrosis, except for recurrent stone formation requiring invasive or non-invasive procedures more than two times/year	30
* * * * * * *	
7520 Penis, removal of half or more	[1] 30
7521 Penis, removal of glans	[1] 20
7522 Erectile dysfunction, with or without penile deformity	[1] 0
Note: For the purpose of VA disability evaluation, a disease or traumatic injury of the penis resulting in scarring or deformity shall be rated under diagnostic code 7522.	
* * * * * * *	
7524 Testis, removal:	
Both	[1] 30
One	[1] 0
Note: In cases of the removal of one testis as the result of a service-incurred injury or disease, other than an undescended or congenitally undeveloped testis, with the absence or nonfunctioning of the other testis unrelated to service, an evaluation of 30 percent will be assigned for the service-connected testicular loss. Testis, undescended, or congenitally undeveloped is not a ratable disability.	
7525 Prostatitis, urethritis, epididymitis, orchitis (unilateral or bilateral), chronic only: Rate as urinary tract infection. For tubercular infections: Rate in accordance with §§ 4.88b or 4.89, whichever is appropriate.	
7527 Prostate gland injuries, infections, hypertrophy, postoperative residuals, bladder outlet obstruction: Rate as voiding dysfunction or urinary tract infection, whichever is predominant.	

	Rating
* * * * * * *	
7533 Cystic diseases of the kidneys:	
Rate as renal dysfunction.	
Note: Cystic diseases of the kidneys include, but are not limited to, polycystic disease, uremic medullary cystic disease, medullary sponge kidney, and similar conditions such as Alport's syndrome, cystinosis, primary oxalosis, and Fabry's disease.	
7534 Atherosclerotic renal disease (renal artery stenosis, atheroembolic renal disease, or large vessel disease, unspecified):	
Rate as renal dysfunction.	
* * * * * * *	
7537 Interstitial nephritis, including gouty nephropathy, disorders of calcium metabolism:	
Rate as renal dysfunction.	
* * * * * * *	
7539 Renal amyloid disease:	
Rate as renal dysfunction.	
Note: This diagnostic code pertains to renal involvement secondary to all glomerulonephritis conditions, all vasculitis conditions and their derivatives, and other renal conditions caused by systemic diseases, such as Lupus erythematosus, systemic lupus erythematosus nephritis, Henoch-Schonlein syndrome, scleroderma, hemolytic uremic syndrome, polyarthritis, Wegener's granulomatosis, Goodpasture's syndrome, and sickle cell disease.	
* * * * * * *	
7541 Renal involvement in diabetes mellitus type I or II:	
Rate as renal dysfunction.	
7542 Neurogenic bladder:	
Rate as voiding dysfunction or urinary tract infection, whichever is predominant.	
7543 Varicocele/Hydrocele	[1] 0
7544 Renal disease caused by viral infection such as human immunodeficiency virus (HIV), Hepatitis B, and Hepatitis C:	
Rate as renal dysfunction.	
7545 Bladder, diverticulum of:	
Rate as voiding dysfunction or urinary tract infection, whichever is predominant.	

[1] Review for entitlement to special monthly compensation under § 3.350 of this chapter.

■ 4. Amend appendix A to part 4 by:
■ a. Revising the entry for § 4.115a;
■ b. Under the entry for § 4.115b, revising the entries for diagnostic codes 7500, 7501, 7502, 7504, 7507, 7508, 7509, 7510, 7511, 7516, 7520, 7521, 7522, 7524, 7525, 7527, 7528, 7529, 7530, 7531, 7532, 7533, 7534, 7535, 7536, 7537, 7538, 7539, 7540, 7541, and 7542; and
■ c. Under the entry for § 4.115b, adding in numerical order entries for diagnostic codes 7543 through 7545.

The revisions and additions read as follows:

Appendix A to Part 4—Table of Amendments and Effective Dates Since 1946

Sec.	Diagnostic code No.	
*	*	* * * * * *
4.115a		Re-designated and revised as § 4.115b; new § 4.115a "Ratings of the genitourinary system-dysfunctions" added February 17, 1994; revised November 14, 2021.
4.115b	7500	Note July 6, 1950; evaluation February 17, 1994, criterion September 8, 1994; criterion November 14, 2021.
	7501	Evaluation February 17, 1994; criterion November 14, 2021.
	7502	Evaluation February 17, 1994; criterion November 14, 2021.
*	*	* * * * * *
	7504	Evaluation February 17, 1994; criterion November 14, 2021.
*	*	* * * * * *
	7507	Evaluation February 17, 1994; criterion November 14, 2021.
	7508	Evaluation February 17, 1994; title, criterion November 14, 2021.
	7509	Evaluation February 17, 1994; criterion November 14, 2021.
	7510	Evaluation February 17, 1994; removed November 14, 2021.
	7511	Evaluation February 17, 1994; criterion November 14, 2021.
*	*	* * * * * *
	7516	Evaluation February 17, 1994; criterion November 14, 2021.
*	*	* * * * * *
	7520	Criterion February 17, 1994; criterion, footnote November 14, 2021.
	7521	Criterion February 17, 1994; criterion, footnote November 14, 2021.
	7522	Criterion September 8, 1994; title, criterion, note November 14, 2021.
*	*	* * * * * *
	7524	Note July 6, 1950; evaluation February 17, 1994; evaluation September 8, 1994; note November 14, 2021.
	7525	Criterion March 11, 1969; evaluation February 17, 1994; title and criterion November 14, 2021.

Sec.	Diagnostic code No.	
*	*	* * * * * * *
	7527	Criterion February 17, 1994; title and criterion November 14, 2021.
	7528	Criterion March 10, 1976; criterion February 17, 1994; criterion November 14, 2021.
	7529	Evaluation February 17, 1994; criterion November 14, 2021.
	7530	Added September 9, 1975; evaluation February 17, 1994; criterion November 14, 2021.
	7531	Added September 9, 1975; criterion February 17, 1994; criterion November 14, 2021.
	7532	Evaluation February 17, 1994; criterion November 14, 2021.
	7533	Added February 17, 1994; title, criterion, and note November 14, 2021.
	7534	Added February 17, 1994; title and criterion November 14, 2021.
	7535	Evaluation February 17, 1994; criterion November 14, 2021.
	7536	Evaluation February 17, 1994; criterion November 14, 2021.
	7537	Added February 17, 1994; title and criterion November 14, 2021.
	7538	Evaluation February 17, 1994; criterion November 14, 2021.
	7539	Added February 17, 1994; note and criterion November 14, 2021.
	7540	Evaluation February 17, 1994; criterion November 14, 2021.
	7541	Added February 17, 1994; title and criterion November 14, 2021.
	7542	Added February 17, 1994; criterion November 14, 2021.
	7543	Added November 14, 2021.
	7544	Added November 14, 2021.
	7545	Added November 14, 2021.
*	*	* * * * * * *

■ 5. Amend appendix B to part 4 by:

■ a. Revising the entries for diagnostic codes 7508, 7522, 7525, 7527, 7533, 7534, 7537, and 7541;

■ b. Removing the entry for diagnostic code 7510; and

■ c. Adding in numerical order entries for diagnostic codes 7543 through 7545.

The revisions and additions read as follows:

Appendix B to Part 4—Numerical Index of Disabilities

Diagnostic code No.	
	The Genitourinary System
*	* * * * * * *
7508	Nephrolithiasis/Ureterolithiasis/Nephrocalcinosis.
*	* * * * * * *
7522	Erectile dysfunction, with or without penile deformity.
*	* * * * * * *
7525	Prostatitis, urethritis, epididymitis, orchitis (unilateral or bilateral), chronic only.
7527	Prostate gland injuries, infections, hypertrophy, postoperative residuals, bladder outlet obstruction.
*	* * * * * * *
7533	Cystic diseases of the kidneys.
7534	Atherosclerotic renal disease (renal artery stenosis, atheroembolic renal disease, or large vessel disease, unspecified).
*	* * * * * * *
7537	Interstitial nephritis, including gouty nephropathy, disorders of calcium metabolism.
*	* * * * * * *
7541	Renal involvement in diabetes mellitus type I or II.
*	* * * * * * *
7543	Varicocele/Hydrocele.
7544	Renal disease caused by viral infection such as HIV, Hepatitis B, and Hepatitis C.
7545	Bladder, diverticulum of.
*	* * * * * * *

■ 6. Amend appendix C to part 4 by:

■ a. Under the heading ''Bladder,'' adding in alphabetical order an entry for ''Diverticulum of'' (diagnostic code 7545);

■ b. Revising the entry for ''Interstitial nephritis'' (diagnostic code 7537);

■ c. Revising the entry for ''Nephrolithiasis'' (diagnostic code 7508);

■ d. Under the heading ''Penis,'' removing the entry for ''Deformity, with loss of erectile power'' (diagnostic code 7522), and adding an entry for ''Erectile dysfunction'' in its place;

■ e. Revising the entry for ''Prostate gland'' (diagnostic code 7527);

■ f. Under the heading ''Renal,'' adding in alphabetical order an entry for ''Disease caused by viral infection such as HIV, Hepatitis B, and Hepatitis C'' (diagnostic code 7544);

■ g. Under the heading ''Renal,'' removing the entry for ''Involvement in systemic diseases'' (diagnostic code 7541), and adding an entry for ''Involvement in diabetes mellitus type I or II'' in its place;

■ h. Removing the entry for ''Ureterolithiasis'' (diagnostic code 7510);

■ i. Removing the entry for ''Epididymo-orchitis'' (diagnostic code 7525);

■ j. Adding in alphabetical order an entry for ''Prostatitis, urethritis, epididymitis, orchitis (unilateral or bilateral), chronic only'' (diagnostic code 7525); and

■ k. Adding in alphabetical order an entry for ''Varicocele/Hydrocele'' (diagnostic code 7543).

The additions and revisions read as follows:

Appendix C to Part 4—Alphabetical Index of Disabilities

	Diagnostic code No.
* * * * * * *	
Bladder:	
Calculus in	7515
Diverticulum of	7545
Fistula in	7516
Injury of	7517
Neurogenic	7542
* * * * * * *	
Interstitial nephritis, including gouty nephropathy, disorders of calcium metabolism	7537
* * * * * * *	
Nephrolithiasis/Ureterolithiasis/Nephrocalcinosis	7508
* * * * * * *	
Penis:	
Erectile dysfunction	7522
Removal of glans	7521
Removal of half or more	7520
* * * * * * *	
Prostate gland injuries, infections, hypertrophy, postoperative residuals, bladder outlet obstruction	7527
Prostatitis, urethritis, epididymitis, orchitis (unilateral or bilateral), chronic only	7525
* * * * * * *	
Renal:	
Amyloid disease	7539
Disease, chronic	7530
Disease caused by viral infection such as HIV, Hepatitis B, and Hepatitis C	7544
Involvement in diabetes mellitus type I or II	7541
Tubular disorders	7532
* * * * * * *	
Varicocele/Hydrocele	7543
* * * * * * *	

[FR Doc. 2021–19997 Filed 9–29–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AQ67

Schedule for Rating Disabilities: The Cardiovascular System

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (''VASRD'' or ''rating schedule'') by revising the portion of the rating schedule that addresses the cardiovascular system. The purpose of this revision is to ensure that this portion of the rating schedule uses current medical terminology and provides detailed and updated criteria for the evaluation of cardiovascular disabilities by incorporating medical advances that have occurred since the last review.

DATES: This rule is effective November 14, 2021.

FOR FURTHER INFORMATION CONTACT: Gary Reynolds, M.D., Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA published a proposed rule in the **Federal Register** at 84 FR 37594 on August 1, 2019, to amend the regulations involving the cardiovascular system. VA provided a 60-day public comment period and invited interested persons to submit written comments, suggestions, or objections on or before September 30, 2019. VA received comments from National Organization of Veterans' Advocates (NOVA), Military Disability Made Easy (two comments), Veterans of Foreign Wars (VFW), National Veterans Legal Services

Program (NVLSP), and four individuals. VA has made limited changes based on these comments, as discussed below.

Section-by-Section Discussion of Part 4 of Title 38 of the CFR

General Discussion:

One commenter requested clarification for the meaning of ''month'' and asked that the number of days that a ''month'' represents be provided. VA clarifies that the term ''month'' is used to describe the procession from one month to the next on the Gregorian calendar. It does not denote a specific number of days since the number of days in a month vary throughout the year. However, for the purpose of understanding how long a temporary evaluation will be effective based on ''months,'' VA clarifies that temporary evaluations remain effective until the last day of the month in which the temporary evaluation ends. As an example, under Diagnostic Code 7000, VA will assign a 100-percent evaluation during active infection with valvular heart disease and for three months following the cessation of treatment for the active infection. If treatment ceased on January 5, 2020, the temporary evaluation would end after three months (on approximately April 5, 2020) and would remain effective until the end of the current month, April 30, 2020.

§ 4.100, Application of the evaluation criteria for diagnostic codes 7000–7007, 7011, and 7015:

Three issues within this section were highlighted by multiple commenters. One commenter asked why it was necessary to wait for significant debilitation before compensation is awarded when using disease classification as a basis for compensation. VA notes current law requires that VA adopt and apply ''a schedule of ratings of reductions in earning capacity from specific injuries or combination of injuries'' that are based upon the average impairments of earning capacity from injuries or disabilities related to military service in civil occupations. *See* 38 U.S.C. 1155. Second, disease classification is not a consistently accurate predictor of either disability or loss in earnings capacity. VA makes no changes based on this comment.

Another commenter asked what are the alternatives that can be used instead of metabolic equivalent of task (METs) when METs testing is contraindicated for diagnostic codes using the General Rating Formula for Diseases of the Heart. VA notes that under certain evaluation criteria within the General Rating Formula for Diseases of the Heart, medication and selected echocardiogram findings may be used. In addition, Note 2 of the General Rating Formula, as proposed, states that examiners are permitted to estimate METs level based on an interview when testing cannot be conducted. VA makes no changes based on this comment.

Three commenters objected to the removal of congestive heart failure (CHF) and left ventricular ejection fraction (LVEF). One commenter stated that instead of removing CHF and LVEF, VA should require medical examiners to provide a full picture of the heart disability, including explaining if CHF or LVEF is not caused by the heart condition, in accordance with § 4.10. Another commenter questioned the rationale for removing CHF and LVEF because VA argued for including those metrics in a 2002 proposed rule. The commenter also stated that removing these metrics would be overly restrictive and burdensome to veterans with limited access to care. The last commenter objected to the removal of CHF and LVEF and cited a 2017 medical journal article which concluded that LVEF was the best metric for functional and structural cardiac remodeling. VA appreciates these comments but continues with the proposed changes without modification for the following reasons.

First, under certain evaluation criteria within the General Rating Formula for Diseases of the Heart, medication and selected echocardiogram findings may be used instead of METs. Second, it should be noted that § 4.10 requires in part ''full description of the effects of disability upon the person's ordinary activity.'' CHF is actually a medical diagnosis, and does not, in and of itself, describe disability. Additionally, ''ejection fraction (LVEF) is poorly related to exercise tolerance (which is measured in METS).'' Topol, E.J., ''Textbook of Cardiovascular Medicine, 3rd Edition, pg. 1349 (2007). MET, on the other hand, is a metric used to describe functional capacity or exercise tolerance of an individual performing activities, for some of which the difficulty with or inability to perform has a profoundly negative effect on earnings capacity. As VA explained in the proposed rule, LVEF and CHF are unreliable tools for assessing functional limitation and disability due to cardiac disease because they may be influenced by numerous factors not directly associated with the underlying cardiovascular disease. 84 FR at 37595. Third, on August 22, 2002, VA published proposed changes to § 4.100 that, while providing a basis to include consideration of LVEF and CHF in the cardiac disability evaluation, also clarified that VA does not require all three tests (*i.e.,* METs, CHF, and LVEF) in order to evaluate a cardiac disability. See 67 FR 54394. At the time, VA stated that ''[o]ur intent in providing alternative criteria was to avoid the need for a veteran to undergo additional tests that might be invasive, risky, costly, or time-consuming, if one or more objective and reliable tests or findings suitable for evaluation purposes are already of record.'' *Id.* at 54395. These proposed changes were finalized in 2006. *See* 71 FR 52457. VA does not consider removing CHF and LVEF as inconsistent with its stated intention in 2002. VA's intent has consistently been to avoid, whenever possible, invasive, risky, costly, or time-consuming tests when ascertaining level of impairment and METs testing is the least invasive procedure compared to CHF and LVEF testing. Further, although one commenter raised the issue of local accessibility of certain testing, VA notes that METs can be obtained via provider interview, observation, or actual physical testing.

Finally, a commenter who objected to the removal of CHF and LEVF also cited a 2017 medical journal article that involves functional and structural phenotyping of failing hearts to better diagnose, treat, and otherwise manage heart failure. The article does not, however, address residual disability leading to loss in earnings capacity, which is the primary focus of the ratings schedule.

§ 4.104, Schedule of ratings-cardiovascular system:

Two commenters raised three issues specific to this section. One commenter agreed with VA's continued recognition of palpitations and arrhythmias as elements within selected evaluation criteria. VA thanks the commenter for their input. One commenter disagreed with using METs, claiming they are inaccurate within key situations (*e.g.,* normal METs values despite cardiac abnormalities; symptomatic only with activities requiring greater than 10 METs; and METs are inaccurate for sustained activities). Finally, in place of METs, that commenter noted that disease is the limiting factor, and should be both measured as well as classified to determine compensation levels.

VA makes no changes based on the immediately preceding comments for the following reasons. VA disagrees with the commenter's conclusion that METs are inaccurate in situations involving normal function despite anatomic abnormalities and during sustained activities. Regardless of whether any anatomic/medical/

structural abnormalities exist, if they are not associated with a specific disability or disabilities, then such abnormalities are not a basis for disability compensation. Second, the Compendium of Physical Activities, which is ''a coding scheme that classifies specific physical activity . . . by rate of energy expenditure,'' *https://pubmed.ncbi.nlm.nih.gov/10993420/,* shows that while the amount of energy expended depends on the duration of the activity, the rate of energy expenditure is unchanged regardless of how long the energy is expended.

Finally, VA notes that the fact that a disease classification system functions well in terms of guiding treatment or predicting prognosis does not necessarily imply it is an adequate tool for rating disabilities. Pursuant to 38 U.S.C. 1155, VA's rating schedule is intended to reflect reductions in earning capacity from specific injuries or disabilities incurred in or due to military service, so any proposed classification system must fulfill that requirement.

Specific Diagnostic Codes (DCs)

Proposed new DC 7009, bradycardia (bradyarrhythmia), symptomatic, requiring permanent pacemaker implantation and current DC 7018, implantable cardiac pacemakers:

One commenter asked if a 100-percent evaluation for implanted pacemakers could be prolonged if recovery time was greater than one month. VA proposed to add a new DC 7009 for bradycardia requiring permanent pacemaker implantation that would provide a 100-percent evaluation for one month following hospitalization for implantation or re-implantation. Residuals after the following initial month will be evaluated using the General Rating Formula. Aside from total (100 percent) evaluations provided in the rating schedule, VA also provides temporary 100-percent evaluation ratings for any service-connected disability that requires hospitalization longer than 21 days or more or requires at least one month of convalescence for surgery (or immobilization by cast of one major joint or more), if the evidence shows that it is warranted. See 38 CFR 4.29–4.30. Since VA has provisions in place for post-operative or surgical total evaluations for such instances, VA makes no changes based on this comment.

Proposed new DC 7009, bradycardia (bradyarrhythmia), symptomatic, requiring permanent pacemaker implantation and current DCs 7010, supraventricular arrhythmias, 7011, ventricular arrhythmias (sustained), and 7015, atrioventricular block:

The proposed rule stated that, for conditions under these DCs, ''a single evaluation will be assigned under the diagnostic code that reflects the predominant disability picture.'' One commenter asked how a ''medical professional'' could ''appeal[ ] or otherwise alter[ ]'' the diagnostic code to the extent that person disagrees with that instruction. VA clarifies that ''predominant disability picture'' is a term of art that generally describes the disability that allows for the highest compensable evaluation. To the extent the commenter means to ask whether an examiner can provide additional information beyond what he or she believes is contemplated by the applicable diagnostic code, the answer is that an examiner should always strive to provide a complete picture of the claimant's disability, including any salient details, and provide medical reasoning to justify any conclusions drawn, which is consistent with the examiner's obligations under 38 CFR 4.10. If a veteran is service connected for two of these disabilities, a VA rating specialist will consider the probative value of this report in selecting the disability that warrants the highest evaluation to evaluate both conditions, consistent with the rater's obligation ''to interpret reports of examination in the light of the whole recorded history, reconciling the various reports into a consistent picture so that the current rating may accurately reflect the elements of disability present.'' 38 CFR 4.2.

If the claimant or the claimant's representative believes another service-connected condition is more disabling to the point that it warrants a higher evaluation than the original condition, the claimant or the claimant's representative may present evidence in support of that argument in whatever posture is most appropriate at the time. For example, the claimant may raise that argument in a notice of disagreement if filed within one year of the rating decision notification letter containing the disputed disability picture assessment, or the claimant may file an increased rating claim if the other service-connected condition has become the prominent disability any time after the initial rating decision becomes final. At that time, if the rating specialist determines the evidence supports the claimant's argument, VA will assign a new higher evaluation to reflect the appropriate disability picture. VA makes no changes based on this comment.

DC 7010, Supraventricular Arrythmias:

Four different commenters raised multiple concerns with this DC. Two commenters raised the issue of hospitalizations, one objecting to the use in the revised evaluation criteria and the other asking what level of hospitalization is required to receive an evaluation. VA used the term ''hospitalizations'' in giving a general description of the evaluation criteria revisions, but the proposed rule goes on to state VA's actual intent, which was to use specific treatment interventions such as intravenous pharmacologic adjustment, cardioversion, and/or ablation from a provider that are intended to treat acutely disabling symptoms. Hospitalization may or may not be associated with these treatment interventions, so it was excluded as a description within the evaluation criteria. VA regrets any confusion resulting from the use of the word ''hospitalizations'' in association with this DC and continues with the proposed changes without modification.

Three commenters proposed oral medication be used within evaluation criteria. One commenter proposed adding emergency room (ER) visits to the evaluation criteria. Still another commenter proposed adding vagal maneuvers to the evaluation criteria. VA agrees to incorporate oral medications and vagal maneuvers but declines to revise the evaluation criteria to incorporate ER visits. As previously stated, the evaluation criteria will be based on residual disability from treatment interventions to resolve disabling symptoms. ER visits do not necessarily require intravenous pharmacologic adjustment, cardioversion, or ablation to block or control the condition and any associated disability. When they do, the proposed evaluation criteria can accommodate this situation.

Finally, two commenters stated that the criteria did not account for other symptoms associated with supraventricular tachycardia, specifically extreme fatigue and tachycardia that induces hypotension, shortness of breath, dizziness, and chest pain. VA declines to revise the evaluation criteria to incorporate symptoms of extreme fatigue, hypotension, shortness of breath, dizziness, and chest pain. This DC specifically addresses supraventricular tachycardia; however, if the condition also causes ventricular arrhythmias (*i.e.,* tachycardia and bradycardia), an evaluation can be assigned using DC 7011 under the general rating formula, which considers symptoms of fatigue,

syncope (hypotension), breathlessness, dizziness, and angina (chest pain). VA points to the instruction concerning DCs 7009, 7010, 7011, and 7015, which only allow for a single evaluation for all four DCs based on the one that reflects the pre-dominant disability picture.

DC 7011, Ventricular Arrhythmias (Sustained):

One commenter recommended VA include ''discharge from inpatient cardiac rehabilitation'' as another event before waiting six months to conduct the mandatory reexamination for a sustained arrhythmia or ventricular aneurysmectomy. This recommendation was made to ensure VA claims processors do not disallow the application of the provisions of § 4.29 in cases where the veteran is receiving cardiac rehabilitation, which the commenter believed to be a mistake.

The 100-percent evaluation under DC 7011, which is assigned for sustained ventricular arrhythmias following discharge from inpatient hospitalization, already contemplates activities the veteran may be subject to after sustained arrhythmia or ventricular aneurysmectomy, such as cardiac rehabilitation. In addition, a 100-percent evaluation under DC 7011 is assigned for an indefinite period and can remain even after the initial six-month mandatory reexamination, if the findings of the VA examination contemplated in the Note to DC 7011 warrant such a determination. Finally, VA confirms that it is appropriate to not apply the provisions of § 4.29 in cases where the veteran is currently receiving a temporary total rating for a disability for which hospitalization was required. Therefore, inpatient cardiac rehabilitation that occurs at any point during the indefinite assignment of a 100-percent rating under this DC cannot also qualify for benefits under the provisions of § 4.29, which provide a temporary total disability rating for a service-connected disability requiring hospital treatment in a VA or VA-approved hospital for a period in excess of 21 days. Therefore, VA makes no changes based on this comment. VA does, however, take this opportunity to clarify that the hospitalization referenced in DC 7011 is intended to only apply to inpatient cardiac hospitalization.

DC 7015, Atrioventricular Block:

One commenter asked if a block can be reclassified between benign or non-benign. The commenter mischaracterizes how an evaluation changes from benign to non-benign, so VA would like to clarify how a veteran receives an evaluation for an atrioventricular block and how that evaluation changes. An evaluation occurs whenever a veteran submits an electrocardiogram (ECG) with either benign or non-benign atrioventricular block findings. Instead of re-classification, it is during a follow-up examination when the ECG conversion to a non-benign atrioventricular block is identified. It is the submission of that second (non-benign) ECG that changes the evaluation from VA raters. VA makes no changes based on this comment.

DC 7019, Cardiac Transplantation:

One commenter sought clarification about the one-year time periods for rating and the mandatory evaluation. The commenter went on further to assert it did not make sense for VA to stipulate that the 100 percent evaluation under this DC only last for one year starting from the hospital admission but mandate reexamination one year after discharge. VA reiterates that it proposed to replace the phrase ''for an indefinite period'' concerning the length of the 100 percent evaluation with the phrase ''for a minimum of one year.'' This means that the 100 percent evaluation can exceed one year depending on the circumstances of the case, including the date of discharge as well as the date of the reexamination. VA makes no changes based on this comment.

DC 7110, Aortic Aneurysm:

Two commenters provided input for this DC. One commenter felt the evaluation criteria were confusing, particularly the criteria for the zero-percent evaluation. The other commenter asked if veterans previously receiving a 60-percent evaluation with an aortic aneurysm that precluded exertion would be evaluated under the proposed 100-percent evaluation.

First, VA clarifies that a veteran previously receiving a 60-percent evaluation with an aortic aneurysm that precluded exertion will now be entitled to a 100-percent evaluation. Second, VA originally proposed to provide a 100-percent evaluation under this DC when the aneurysm size is five centimeters or larger or when the aneurysm is symptomatic (*e.g.,* precludes exertion) and surgical correction was recommended. A zero-percent evaluation would have been assignable if surgery was not recommended and the aneurysm was smaller than five centimeters. Based on the comment, and to provide additional clarity, VA revises the evaluation criteria to specify that a 100-percent evaluation applies when (1) the aneurysm is five centimeters or larger in diameter; (2) the aneurysm is symptomatic; or (3) surgical correction is required. The current note addressing the circumstances triggering mandatory VA examination will be edited for clarity and will indicate that the 100-percent evaluation period begins on the date the physician recommends surgical correction, as described in the proposed rule.

DC 7120, Varicose Veins:

One commenter noted the proposed criteria under DC 7120 states ''evaluate under diagnostic code 7121;'' however, DC 7121 was not listed in the proposed rating schedule. VA thanks the commenter for this comment. DC 7121 was not listed in the proposed rule because there is no change to the criteria that currently exists under that DC.

Technical Corrections:

Several technical corrections were made for ease of reading or parity in rating schedule language to the following DCs: 7009, 7010, 7011, 7110, and 7124. These corrections were minor and non-substantive in nature and did not change the meaning or substance of the criteria or notes.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The certification is based on the fact that no small entities or businesses assign evaluations for disability claims. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

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

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on June 23, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 4 as follows:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

■ 2. Amend § 4.100 by revising paragraph (b) and adding an authority at the end of the section to read as follows:

§ 4.100 Application of the evaluation criteria for diagnostic codes 7000–7007, 7011, and 7015–7020.

* * * * *

(b) Even if the requirement for a 10% (based on the need for continuous medication) or 30% (based on the presence of cardiac hypertrophy or dilatation) evaluation is met, METs testing is required in all cases except:

(1) When there is a medical contraindication.

(2) When a 100% evaluation can be assigned on another basis.

(Authority: 38 U.S.C. 1155)

■ 3. Amend § 4.104 by:
■ a. Adding introductory text under the heading ''Diseases of the Heart'';
■ b. Revising notes 1 and 2;
■ c. Adding note 3;
■ d. Adding an entry for ''General Rating Formula for Diseases of the Heart'' after note 3;
■ e. Revising the entries for DCs 7000, 7001, 7002, 7003, 7004, 7005, 7006, 7007, and 7008;
■ f. Adding an entry for DC 7009;
■ g. Revising the entries for DCs 7010, 7011, 7015, 7016, 7017, 7018, 7019, 7020, 7110, 7111, 7113, 7114, 7115, 7117, 7120, and 7122; and
■ h. Adding DC 7124.

The revisions and additions read as follows:

§ 4.104 Schedule of ratings—cardiovascular system.

DISEASES OF THE HEART

[Unless otherwise directed, use this general rating formula to evaluate diseases of the heart.]

	Rating
Note (1): Evaluate cor pulmonale, which is a form of secondary heart disease, as part of the pulmonary condition that causes it.	
Note (2): One MET (metabolic equivalent) is the energy cost of standing quietly at rest and represents an oxygen uptake of 3.5 milliliters per kilogram of body weight per minute. When the level of METs at which breathlessness, fatigue, angina, dizziness, or syncope develops is required for evaluation, and a laboratory determination of METs by exercise testing cannot be done for medical reasons, a medical examiner may estimate the level of activity (expressed in METs and supported by specific examples, such as slow stair climbing or shoveling snow) that results in those symptoms.	
Note (3): For this general formula, heart failure symptoms include, but are not limited to, breathlessness, fatigue, angina, dizziness, arrhythmia, palpitations, or syncope.	
GENERAL RATING FORMULA FOR DISEASES OF THE HEART:	
Workload of 3.0 METs or less results in heart failure symptoms	100
Workload of 3.1–5.0 METs results in heart failure symptoms	60
Workload of 5.1–7.0 METs results in heart failure symptoms; or evidence of cardiac hypertrophy or dilatation confirmed by echocardiogram or equivalent (*e.g.,* multigated acquisition scan or magnetic resonance imaging)	30
Workload of 7.1–10.0 METs results in heart failure symptoms; or continuous medication required for control	10
7000 Valvular heart disease (including rheumatic heart disease),	
7001 Endocarditis, or	
7002 Pericarditis:	
During active infection with cardiac involvement and for three months following cessation of therapy for the active infection	100
Thereafter, with diagnosis confirmed by findings on physical examination and either echocardiogram, Doppler echocardiogram, or cardiac catheterization, use the General Rating Formula.	
7003 Pericardial adhesions.	
7004 Syphilitic heart disease:	
Note: Evaluate syphilitic aortic aneurysms under DC 7110 (Aortic aneurysm: Ascending, thoracic, abdominal).	
7005 Arteriosclerotic heart disease (coronary artery disease).	
Note: If non-service-connected arteriosclerotic heart disease is superimposed on service-connected valvular or other non-arteriosclerotic heart disease, request a medical opinion as to which condition is causing the current signs and symptoms.	
7006 Myocardial infarction:	
During and for three months following myocardial infarction, confirmed by laboratory tests	100

DISEASES OF THE HEART—Continued

[Unless otherwise directed, use this general rating formula to evaluate diseases of the heart.]

	Rating
Thereafter, use the General Rating Formula.	
7007 Hypertensive heart disease.	
7008 Hyperthyroid heart disease:	
Rate under the appropriate cardiovascular diagnostic code, depending on particular findings.	
For DCs 7009, 7010, 7011, and 7015, a single evaluation will be assigned under the diagnostic code that reflects the predominant disability picture.	
7009 Bradycardia (Bradyarrhythmia), symptomatic, requiring permanent pacemaker implantation:	
For one month following hospital discharge for implantation or re-implantation	100
Thereafter, use the General Rating Formula.	
Note (1): Bradycardia (bradyarrhythmia) refers to conduction abnormalities that produce a heart rate less than 60 beats/min. There are five general classes of bradyarrhythmia: Sinus bradycardia, including sinoatrial block; atrioventricular (AV) junctional (nodal) escape rhythm; AV heart block (second or third degree) or AV dissociation; atrial fibrillation or flutter with a slow ventricular response; and, idioventricular escape rhythm.	
Note (2): Asymptomatic bradycardia (bradyarrhythmia) is a medical finding only. It is not a disability subject to compensation.	
7010 Supraventricular tachycardia:	
Confirmed by ECG, with five or more treatment interventions per year	30
Confirmed by ECG, with one to four treatment interventions per year; or, confirmed by ECG with either continuous use of oral medications to control or use of vagal maneuvers to control	10
Note (1): Examples of supraventricular tachycardia include, but are not limited to: Atrial fibrillation, atrial flutter, sinus tachycardia, sinoatrial nodal reentrant tachycardia, atrioventricular nodal reentrant tachycardia, atrioventricular reentrant tachycardia, atrial tachycardia, junctional tachycardia, and multifocal atrial tachycardia.	
Note (2): For the purposes of this diagnostic code, a treatment intervention occurs whenever a symptomatic patient requires intravenous pharmacologic adjustment, cardioversion, and/or ablation for symptom relief.	
7011 Ventricular arrhythmias (sustained):	
For an indefinite period from the date of inpatient hospital admission for initial medical therapy for a sustained ventricular arrhythmia; or, for an indefinite period from the date of inpatient hospital admission for ventricular aneurysmectomy; or, with an automatic implantable cardioverter-defibrillator (AICD) in place	100
Note: When inpatient hospitalization for sustained ventricular arrhythmia or ventricular aneurysmectomy is required, a 100-percent evaluation begins on the date of hospital admission with a mandatory VA examination six months following hospital discharge. Evaluate post-surgical residuals under the General Rating Formula. Apply the provisions of § 3.105(e) of this chapter to any change in evaluation based upon that or any subsequent examination.	
7015 Atrioventricular block:	
Benign (First-Degree and Second-Degree, Type I):	
Evaluate under the General Rating Formula.	
Non-Benign (Second-Degree, Type II and Third-Degree):	
Evaluate under DC 7018 (implantable cardiac pacemakers).	
7016 Heart valve replacement (prosthesis):	
For an indefinite period following date of hospital admission for valve replacement	100
Thereafter, use the General Rating Formula.	
Note: Six months following discharge from inpatient hospitalization, disability evaluation shall be conducted by mandatory VA examination using the General Rating Formula. Apply the provisions of § 3.105(e) of this chapter to any change in evaluation based upon that or any subsequent examination.	
7017 Coronary bypass surgery:	
For three months following hospital admission for surgery	100
Thereafter, use the General Rating Formula.	
7018 Implantable cardiac pacemakers:	
For one month following hospital discharge for implantation or re-implantation	100
Thereafter:	
Evaluate as supraventricular tachycardia (DC 7010), ventricular arrhythmias (DC 7011), or atrioventricular block (DC 7015).	
Minimum	10
Note: Evaluate automatic implantable cardioverter-defibrillators (AICDs) under DC 7011.	
7019 Cardiac transplantation:	
For a minimum of one year from the date of hospital admission for cardiac transplantation	100
Thereafter:	
Evaluate under the General Rating Formula.	
Minimum	30
Note: One year following discharge from inpatient hospitalization, determine the appropriate disability rating by mandatory VA examination. Apply the provisions of § 3.105(e) of this chapter to any change in evaluation based upon that or any subsequent examination.	
7020 Cardiomyopathy.	
DISEASES OF THE ARTERIES AND VEINS	
* * * * * * *	
7110 Aortic aneurysm: Ascending, thoracic, or abdominal:	
Evaluate at 100 percent if the aneurysm is any one of the following: Five centimeters or larger in diameter; symptomatic (*e.g.,* precludes exertion); or requires surgery	100
Otherwise	0
Evaluate non-cardiovascular residuals of surgical correction according to organ systems affected.	

DISEASES OF THE HEART—Continued

[Unless otherwise directed, use this general rating formula to evaluate diseases of the heart.]

	Rating
Note: When surgery is required, a 100-percent evaluation begins on the date a physician recommends surgical correction with a mandatory VA examination six months following hospital discharge. Evaluate post-surgical residuals under the General Rating Formula. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.	
7111 Aneurysm, any large artery:	
If symptomatic; or, for the period beginning on the date a physician recommends surgical correction and continuing for six months following discharge from inpatient hospital admission for surgical correction	100
Following surgery: Evaluate under DC 7114 (peripheral arterial disease).	
Note: Six months following discharge from inpatient hospitalization for surgery, determine the appropriate disability rating by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.	
* * * * * * *	
7113 Arteriovenous fistula, traumatic:	
With high-output heart failure	100
Without heart failure but with enlarged heart, wide pulse pressure, and tachycardia	60
Without cardiac involvement but with chronic edema, stasis dermatitis, and either ulceration or cellulitis:	
Lower extremity	50
Upper extremity	40
Without cardiac involvement but with chronic edema or stasis dermatitis:	
Lower extremity	30
Upper extremity	20
7114 Peripheral arterial disease:	
At least one of the following: Ankle/brachial index less than or equal to 0.39; ankle pressure less than 50 mm Hg; toe pressure less than 30 mm Hg; or transcutaneous oxygen tension less than 30 mm Hg	100
At least one of the following: Ankle/brachial index of 0.40–0.53; ankle pressure of 50–65 mm Hg; toe pressure of 30–39 mm Hg; or transcutaneous oxygen tension of 30–39 mm Hg	60
At least one of the following: Ankle/brachial index of 0.54–0.66; ankle pressure of 66–83 mm Hg; toe pressure of 40–49 mm Hg; or transcutaneous oxygen tension of 40–49 mm Hg	40
At least one of the following: Ankle/brachial index of 0.67–0.79; ankle pressure of 84–99 mm Hg; toe pressure of 50–59 mm Hg; or transcutaneous oxygen tension of 50–59 mm Hg	20
Note (1): The ankle/brachial index (ABI) is the ratio of the systolic blood pressure at the ankle divided by the simultaneous brachial artery systolic blood pressure. For the purposes of this diagnostic code, normal ABI will be greater than or equal to 0.80. The ankle pressure (AP) is the systolic blood pressure measured at the ankle. Normal AP is greater than or equal to 100 mm Hg. The toe pressure (TP) is the systolic blood pressure measured at the great toe. Normal TP is greater than or equal to 60 mm Hg. Transcutaneous oxygen tension (T_cPO_2) is measured at the first intercostal space on the foot. Normal T_cPO_2 is greater than or equal to 60 mm Hg. All measurements must be determined by objective testing.	
Note (2): Select the highest impairment value of ABI, AP, TP, or T_cPO_2 for evaluation.	
Note (3): Evaluate residuals of aortic and large arterial bypass surgery or arterial graft as peripheral arterial disease.	
Note (4): These evaluations involve a single extremity. If more than one extremity is affected, evaluate each extremity separately and combine (under § 4.25), using the bilateral factor (§ 4.26), if applicable.	
7115 Thrombo-angiitis obliterans (Buerger's Disease):	
Lower extremity: Rate under DC 7114.	
Upper extremity:	
Deep ischemic ulcers and necrosis of the fingers with persistent coldness of the extremity, trophic changes with pains in the hand during physical activity, and diminished upper extremity pulses	100
Persistent coldness of the extremity, trophic changes with pains in the hands during physical activity, and diminished upper extremity pulses	60
Trophic changes with numbness and paresthesia at the tips of the fingers, and diminished upper extremity pulses	40
Diminished upper extremity pulses	20
Note (1): These evaluations involve a single extremity. If more than one extremity is affected, evaluate each extremity separately and combine (under § 4.25), using the bilateral factor (§ 4.26), if applicable.	
Note (2): Trophic changes include, but are not limited to, skin changes (thinning, atrophy, fissuring, ulceration, scarring, absence of hair) as well as nail changes (clubbing, deformities).	
7117 Raynaud's syndrome (also known as secondary Raynaud's phenomenon or secondary Raynaud's):	
With two or more digital ulcers plus auto-amputation of one or more digits and history of characteristic attacks	100
With two or more digital ulcers and history of characteristic attacks	60
Characteristic attacks occurring at least daily	40
Characteristic attacks occurring four to six times a week	20
Characteristic attacks occurring one to three times a week	10
Note (1): For purposes of this section, characteristic attacks consist of sequential color changes of the digits of one or more extremities lasting minutes to hours, sometimes with pain and paresthesias, and precipitated by exposure to cold or by emotional upsets. These evaluations are for Raynaud's syndrome as a whole, regardless of the number of extremities involved or whether the nose and ears are involved.	
Note (2): This section is for evaluating Raynaud's syndrome (secondary Raynaud's phenomenon or secondary Raynaud's). For evaluation of Raynaud's disease (primary Raynaud's), see DC 7124.	
* * * * * * *	
7120 Varicose veins:	
Evaluate under diagnostic code 7121.	

DISEASES OF THE HEART—Continued

[Unless otherwise directed, use this general rating formula to evaluate diseases of the heart.]

	Rating
* * * * * * *	
7122 Cold injury residuals:	
With the following in affected parts:	
Arthralgia or other pain, numbness, or cold sensitivity plus two or more of the following: Tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, anhydrosis, X-ray abnormalities (osteoporosis, subarticular punched-out lesions, or osteoarthritis), atrophy or fibrosis of the affected musculature, flexion or extension deformity of distal joints, volar fat pad loss in fingers or toes, avascular necrosis of bone, chronic ulceration, carpal or tarsal tunnel syndrome	30
Arthralgia or other pain, numbness, or cold sensitivity plus one of the following: Tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, anhydrosis, X-ray abnormalities (osteoporosis, subarticular punched-out lesions, or osteoarthritis), atrophy or fibrosis of the affected musculature, flexion or extension deformity of distal joints, volar fat pad loss in fingers or toes, avascular necrosis of bone, chronic ulceration, carpal or tarsal tunnel syndrome	20
Arthralgia or other pain, numbness, or cold sensitivity	10
Note (1): Separately evaluate amputations of fingers or toes, and complications such as squamous cell carcinoma at the site of a cold injury scar or peripheral neuropathy, under other diagnostic codes. Separately evaluate other disabilities diagnosed as the residual effects of cold injury, such as Raynaud's syndrome (which is otherwise known as secondary Raynaud's phenomenon), muscle atrophy, etc., unless they are used to support an evaluation under diagnostic code 7122.	
Note (2): Evaluate each affected part (*e.g.,* hand, foot, ear, nose) separately and combine the ratings in accordance with §§ 4.25 and 4.26.	
* * * * * * *	
7124 Raynaud's disease (also known as primary Raynaud's):	
Characteristic attacks associated with trophic change(s), such as tight, shiny skin	10
Characteristic attacks without trophic change(s)	0
Note (1): For purposes of this section, characteristic attacks consist of intermittent and episodic color changes of the digits of one or more extremities, lasting minutes or longer, with occasional pain and paresthesias, and precipitated by exposure to cold or by emotional upsets. These evaluations are for the disease as a whole, regardless of the number of extremities involved or whether the nose and ears are involved.	
Note (2): Trophic changes include, but are not limited to, skin changes (thinning, atrophy, fissuring, ulceration, scarring, absence of hair) as well as nail changes (clubbing, deformities).	
Note (3): This section is for evaluating Raynaud's disease (primary Raynaud's). For evaluation of Raynaud's syndrome (also known as secondary Raynaud's phenomenon, or secondary Raynaud's), see DC 7117.	

* * * * *

■ 4. Amend appendix A to part 4 under 4.104 by:

■ a. Adding an entry for ''General Rating Formula for Diseases of the Heart'' above the entry for diagnostic code 7000;

■ b. Revising the entries for DCs 7000 through 7008;

■ c. Adding in numerical order an entry for DC 7009;

■ d. Revising the entries for DCs 7010, 7011, 7015 through 7020, 7110, 7111, 7113 through 7115, 7117, 7120, and 7122; and

■ e. Adding in numerical order an entry for DC 7124.

The additions and revisions read as follows:

Appendix A to Part 4—Table of Amendments and Effective Dates Since 1946

Sec.	Diagnostic code No.	
*	*	* * * * * *
4.104		General Rating Formula for Diseases of the Heart November 14, 2021.
	7000	Evaluation July 6, 1950; evaluation September 22, 1978, evaluation January 12, 1998; criterion November 14, 2021.
	7001	Evaluation January 12, 1998; criterion November 14, 2021.
	7002	Evaluation January 12, 1998; criterion November 14, 2021.
	7003	Evaluation January 12, 1998; criterion November 14, 2021.
	7004	Criterion September 22, 1978; evaluation January 12, 1998; criterion November 14, 2021.
	7005	Evaluation September 9, 1975; evaluation September 22, 1978; evaluation January 12, 1998; criterion November 14, 2021.
	7006	Evaluation January 12, 1998; criterion November 14, 2021.
	7007	Evaluation September 22, 1978; evaluation January 12, 1998; criterion November 14, 2021.
	7008	Evaluation January 12, 1998; criterion December 10, 2017; evaluation November 14, 2021.
	7009	Added November 14, 2021.
	7010	Evaluation January 12, 1998; title, criterion November 14, 2021.
	7011	Evaluation January 12, 1998; note, criterion November 14, 2021.
*	*	* * * * * *
	7015	Evaluation September 9, 1975; criterion January 12, 1998; criterion November 14, 2021.
	7016	Added September 9, 1975; criterion January 12, 1998; note, criterion November 14, 2021.
	7017	Added September 22, 1978; evaluation January 12, 1998; criterion November 14, 2021.

Sec.	Diagnostic code No.	
	7018	Added January 12, 1998; criterion November 14, 2021.
	7019	Added January 12, 1998; note, criterion November 14, 2021.
	7020	Added January 12, 1998; criterion November 14, 2021.
*	*	* * * * * * *
	7110	Evaluation September 9, 1975; evaluation January 12, 1998; title, criterion, note November 14, 2021.
	7111	Criterion September 9, 1975; evaluation January 12, 1998; note, criterion November 14, 2021.
*	*	* * * * * * *
	7113	Evaluation January 12, 1998; criterion November 14, 2021.
	7114	Added June 9, 1952; evaluation January 12, 1998; title, criterion, note November 14, 2021.
	7115	Added June 9, 1952; evaluation January 12, 1998; note, criterion, evaluation November 14, 2021.
*	*	* * * * * * *
	7117	Added June 9, 1952; evaluation January 12, 1998; title, note November 14, 2021.
*	*	* * * * * * *
	7120	Note following July 6, 1950; evaluation January 12, 1998; criterion November 14, 2021.
	7122	Last sentence of Note following July 6, 1950; evaluation January 12, 1998; criterion August 13, 1998; criterion November 14, 2021.
*	*	* * * * * * *
	7124	Added November 14, 2021.
*	*	* * * * * * *

■ 5. Amend appendix B to part 4 at ''The Cardiovascular System'' section'':

■ a. Under the heading ''Diseases of the Heart—

■ i. By adding in numerical order an entry for diagnostic code 7009; and

■ ii. By revising the entry for diagnostic code 7010;

■ b. Under the heading ''Diseases of the Arteries and Veins''—

■ i. By revising diagnostic codes 7110, 7114, and 7117; and

■ ii. By adding in numerical order an entry for diagnostic code 7124.

The additions and revisions read as follows:

Appendix B to Part 4—Numerical Index of Disabilities

Diagnostic code No.	
*	* * * * * * *
	THE CARDIOVASCULAR SYSTEM
	Diseases of the Heart
*	* * * * * * *
7009	Bradycardia (Bradyarrhythmia), symptomatic, requiring permanent pacemaker implantation.
7010	Supraventricular tachycardia.
*	* * * * * * *
	Diseases of the Arteries and Veins
*	* * * * * * *
7110	Aortic aneurysm: ascending, thoracic, abdominal.
*	* * * * * * *
7114	Peripheral arterial disease.
*	* * * * * * *
7117	Raynaud's syndrome (secondary Raynaud's phenomenon, secondary Raynaud's).
*	* * * * * * *
7124	Raynaud's disease (primary Raynaud's).
*	* * * * * * *

■ 6. Amend appendix C to part 4 by:

■ a. Revising the entry for ''Aneurysm'';

■ b. Removing the entries for ''Arrhythmia'' (with its sub-entries ''Supraventricular'' and ''Ventricular'') and ''Arteriosclerosis obliterans'';

■ c. Adding in alphabetical order entries for ''Bradycardia (Bradyarrhthmia), symptomatic, requiring permanent pacemaker implantation'', ''Peripheral arterial disease'', and ''Raynaud's disease (primary Raynaud's)'';

■ d. Revising the entry for Raynaud's syndrome''; and

■ e. Adding entries for ''Supraventricular tachycardia'' and ''Ventricular arrhythmia''.

The revisions and additions read as follows:

Appendix C to Part 4—Alphabetical Index of Disabilities

	Diagnostic code No.
* * * * * * *	
Aneurysm:	
Aortic: ascending, thoracic, abdominal	7110
Large artery	7111
Small artery	7118
* * * * * * *	
Bradycardia (Bradyarrhythmia), symptomatic, requiring permanent pacemaker implantation	7009
* * * * * * *	
Peripheral arterial disease	7114
* * * * * * *	
Raynaud's disease (primary Raynaud's)	7124
Raynaud's syndrome (secondary Raynaud's phenomenon, secondary Raynaud's)	7117
* * * * * * *	
Supraventricular tachycardia	7010
* * * * * * *	
Ventricular arrhythmia	7011
* * * * * * *	

[FR Doc. 2021–19998 Filed 9–29–21; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0360; FRL–8707–02–R7]

Air Plan Approval; Approval of Missouri Air Quality Implementation Plans; Revisions to St. Louis 2008 8-Hour Ozone Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by the State of Missouri on November 12, 2019, revising the maintenance plan demonstrating continued maintenance of the 2008 ozone National Ambient Air Quality Standard (NAAQS), the 1979 1-Hour and 1997 8-Hour ozone standards in the St. Louis area. This revision demonstrates that the St. Louis area no longer needs to rely on the vehicle Inspection and Maintenance (I/M) program and the use of Reformulated Gasoline (RFG) for continued maintenance throughout the maintenance period for the 2008 8-Hour ozone NAAQS, the 1979 1-Hour ozone NAAQS and 1997 8-Hour ozone NAAQS. The EPA has determined that this revision meets the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 1, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2021–0360. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Steven Brown, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7718; email address: *brown.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. What is being addressed in this document?

The EPA is taking final action to approve SIP revisions submitted by the State of Missouri on November 12, 2019, revising the 2008 8-hour ozone maintenance plan previously approved on September 20, 2018 (83 FR 47572). This SIP revision demonstrates continued maintenance of the 2008 8-Hour ozone NAAQS, the 1979 1-Hour ozone NAAQS and 1997 8-Hour ozone NAAQS in the St. Louis area through the future year of 2030. The maintenance area boundary includes the Missouri counties of Franklin, Jefferson, St. Charles, and St. Louis along with the City of St. Louis.

Since the 2008 ozone standard is more stringent than the 1979 and 1997 ozone standards, and the boundary area

for all three designations are identical, we are approving this SIP revision to also replace the previously approved maintenance plans under those older standards.

Through this final action, the EPA is approving this maintenance plan into Missouri's SIP pursuant to the CAA section 175A as a replacement to the maintenance plans previously approved by EPA on October 2, 2018 (83 FR 38033), May 12, 2003 (68 FR 25413), and February 20, 2015 (80 FR 9207).

On May 12, 2003, EPA published a final rule stating the St. Louis area attained the 1979 1-hour ozone standard, redesignated the area to attainment, and approved the State's plan for maintaining the 1-hour ozone NAAQS (68 FR 25413).

On February 20, 2015, EPA issued a final rulemaking approving the State of Missouri's request to redesignate the Missouri portion of the St. Louis nonattainment area to attainment and their demonstration for maintaining the 1997 8-hour ozone NAAQS through the ten-year maintenance period (2025) (80 FR 9207).

This SIP revision we are acting on in this final action, removes the reliance on the St. Louis Inspection and Maintenance (I/M) program, and Reformulated Gasoline (RFG) for continued maintenance of the 2008, 1979 and 1997 standard. To support this revision, Missouri utilized EPA's 2014 Motor Vehicle Emissions Simulator (MOVES2014b) emission modeling system to project revised mobile source emissions by removing emissions reductions related to I/M and RFG throughout the maintenance period to the future year of 2030.

EPA is approving this revised maintenance plan based on information provided in the emissions projections, modeling results, and an evaluation of quality assured air monitoring data submitted as part of this revision and in a previously reviewed analysis as part of the St. Louis Nonattainment Area 2008 8-hour Ozone NAAQS Redesignation rulemaking on September 20, 2018 (83 FR 47572). Current and future projections of air quality and emissions data for this revision demonstrates maintenance for the 2008, 1979 and 1997 ozone NAAQS.

This revision only affects maintenance for the 2008, 1979 and 1997 ozone standards, only removes the reliance upon the I/M program and RFG programs and meets the requirements of the Clean Air Act.

The full text of the plan revisions including Missouri's technical demonstration can be found in the State's submission, which is included in the docket for this action. The EPA solicited comments on these proposed revision to Missouri's SIP published on July 30, 2021 (86 FR 40977), and received one individual's comment in favor of approval. Therefore, the EPA is finalizing the approval of these revisions to the SIP.

II. Have the requirements for approval of a SIP revision been met?

The State's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from July 29, 2019 through September 13, 2019 and received one comment from the Missouri Petroleum Marketers and Convenience Store Association, one comment from Abel Realty, and thirteen comments from EPA. After receiving comments, the State revised the SIP prior to submitting the plan to EPA. In addition, as explained above and in more detail in the Missouri submittal document, which is part of the docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What Action is the EPA taking?

The EPA is taking final action to approve a SIP revision submitted by the State of Missouri on November 12, 2019, revising the 2008 8-hour ozone maintenance plan. EPA has determined that this revision does not interfere with attainment or maintenance of the NAAQS or with any other CAA requirement.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

Dated: September 22, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (e) is amended by adding the entry ''(79)'' in numerical order to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e)* * *

EPA-APPOVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	* *	*	*	* *
(79) Revisions to St. Louis 2008 8-Hour Ozone Maintenance Plan.	St. Louis Area: Missouri counties of Franklin, Jefferson, St. Charles, and St. Louis along with the City of St. Louis.	11/12/2019	9/30/2021, [insert **Federal Register** citation].	EPA–R07–OAR–2015–0513; This action replaces Maintenance plans for the following ozone NAAQS: 1979 1-hour (published in the **Federal Register** on May 12, 2003), 1997 8-hour (published in the **Federal Register** on February 20, 2015), 2008 8-hour (published in the **Federal Register** on September 20, 2018).

[FR Doc. 2021–20974 Filed 9–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0475; FRL–8754–02–R7]

Air Plan Approval; Missouri; Restriction of Emissions From Batch-Type Charcoal Kilns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision submitted to the State Implementation Plan (SIP) by the State of Missouri on January 19, 2021. This final action will amend the SIP to incorporate revisions to Missouri's rule related to control of emissions from Batch-Type Charcoal Kilns. These revisions correct an erroneous reference, update, correct, and clarify references to test methods, remove unnecessary words, and make other grammatical and typographical corrections. These revisions are administrative in nature and do not impact the stringency of the SIP or have an adverse impact to air quality. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 1, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2021–0475. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Robert F. Webber, Environmental Protection Agency, Region 7 Office, Air Permitting and Standards Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7251; email address: *webber.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. What is being addressed in this document?

The EPA is approving revisions to the Missouri SIP received on January 19, 2021. The revisions are to Title 10, Division 10 of the Code of State Regulations (CSR), 10 CSR 10–6.330 ''Restriction of Emissions From Batch-Type Charcoal Kilns'' which establishes emission limits for batch-type charcoal kilns based on operational parameters that reflect the Best Available Control Technology (BACT) for this industry as of August 20, 1997. These revisions correct an erroneous reference to 10 CSR 10–6.030(21), update, correct, and clarify references to test methods, remove unnecessary words, and make other grammatical and typographical corrections. These revisions are described in detail in the technical support document (TSD) included in the docket for this action.

The public comment period on the EPA's proposed rule opened August 10, 2021, the date of its publication in the **Federal Register** and closed on September 9, 2021. (86 FR 43617) During this period, the EPA received no comments. The EPA is approving the revisions to this rule because it meets the requirements of the Clean Air Act and will not have a negative impact on air quality.

II. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from September 16, 2019, to December 10, 2019, and received no comments on this rulemaking. As explained in the EPA's proposed rule and the TSD in the docket for this action, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is the EPA taking?

The EPA is taking final action to amend the Missouri SIP to revise 10 CSR 10–6.330. The EPA received no comments on the revisions detailed in the proposed rule and the TSD. The EPA did not solicit comments on existing rule text that has been previously approved by the EPA into the SIP.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Particulate matter, Volatile organic compounds.

Dated: September 22, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–6.330'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

[1] 62 FR 27968, May 22, 1997.

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * * * *				
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * * * *				
10–6.330	Restriction of Emissions From Batch-Type Charcoal Kilns.	7/30/2020	9/30/2021, [insert **Federal Register** citation].	
* * * * * * *				

* * * * *

[FR Doc. 2021–21033 Filed 9–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0476; FRL–8757–02–R7]

Air Plan Approval; Missouri; Restriction of Particulate Matter Emissions From Fuel Burning Equipment Used for Indirect Heating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri. This final action will amend the SIP to incorporate revisions to Missouri's rule related to the restriction of particulate matter emissions from fuel burning equipment used for indirect heating. These revisions add incorporation by reference information, remove unnecessary words, and make other editorial changes for clarity. These revisions are administrative in nature, do not impact the stringency of the SIP and do not adversely impact air quality. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 1, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2021–0476. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Robert F. Webber, Environmental Protection Agency, Region 7 Office, Air Permitting and Standards Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7251; email address: *webber.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. What is being addressed in this document?

The EPA is approving revisions to the Missouri SIP received on January 19, 2021. The revisions are to Title 10, Division 10 of the Code of State Regulations (CSR), 10 CSR 10–6.405 ''Restriction of Particulate Matter Emissions from Fuel Burning Equipment Used for Indirect Heating'' which restricts the emission of particulate matter from fuel burning equipment used for indirect heating except where 10 CSR 10–6.070 would be applied. This rule applies throughout the State of Missouri with additional conditions applicable to the metropolitan areas of Kansas City, Springfield, and St. Louis. These revisions add incorporation by reference information, remove unnecessary words, and make other editorial changes for clarity. These revisions are described in detail in the technical support document (TSD) included in the docket for this action.

The public comment period on the EPA's proposed rule opened August 10, 2021, the date of its publication in the **Federal Register** and closed on September 9, 2021. (86 FR 43613) During this period, the EPA received no comments. The EPA is approving the revisions to this rule because it meets the requirements of the Clean Air Act and will not have a negative impact on air quality.

II. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from January 2, 2020 to April 2, 2020. The State received and addressed two comments from the EPA. As explained in more detail in the TSD which is part of this docket, the SIP revision submission meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is the EPA taking?

The EPA is taking final action to approve Missouri's request to revise 10 CSR 10–6.405. The EPA received no comments on the revisions detailed in the proposed rule and the TSD. The EPA did not solicit comments on existing rule text that has been

previously approved by the EPA into the SIP.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Particulate matter, Volatile organic compounds.

Dated: September 22, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–6.405'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				

[1] 62 FR 27968, May 22, 1997.

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.405	Restriction of Particulate Matter Emissions from Fuel Burning Equipment Used for Indirect Heating.	9/30/2020	9/30/2021 [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2021–21148 Filed 9–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0676; FRL–8968–02–R4]

Air Plan Approval; South Carolina; Updates to Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on April 24, 2020. The SIP revision approves a non-substantive formatting change and the removal of an outdated sentence regarding test methods for gaseous fluorides from South Carolina's ambient air quality standards regulation. EPA is finalizing approval of these changes pursuant to the Clean Air Act (CAA or Act) and implementing federal regulations.

DATES: This rule is effective November 1, 2021.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0676. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8966. Mr. Febres can also be reached via electronic mail at *febres-martinez.andres@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Through a letter dated April 24, 2020, SC DHEC requested approval of two changes to South Carolina's SIP-approved Regulation 61–62.5, Standard No. 2—*Ambient Air Quality Standards.* First, SC DHEC updates the formatting of references to the Code of Federal Regulations (CFR) by adding the word ''Part'' to CFR references in this regulation. This is a non-substantive, ministerial change. Second, SC DHEC removes a sentence referencing test methods for gaseous fluorides from this regulation.

On June 29, 2017 (82 FR 29414), EPA approved the removal of standards applicable to gaseous fluorides (as hydrogen flouride) from South Carolina's SIP-approved Regulation 61–62.5, Standard No. 2—*Ambient Air Quality Standards.* However, EPA's June 29, 2017, action did not remove the related language describing testing standards for gaseous fluorides that was contained in this same regulation.

In a notice of proposed rulemaking (NPRM) published on May 27, 2021 (86 FR 28519), EPA proposed to approve the aforementioned changes to the South Carolina SIP. Comments on the May 27, 2021, NPRM were due on or before June 28, 2021. EPA did not receive any comments on the May 27, 2021 NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of South Carolina's Regulation 61–62.5, Standard No. 2—*Ambient Air Quality Standards,*'' State effective April 24, 2020. EPA has made and will continue to make these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, the revised materials, as stated above, have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

III. Final Action

EPA is finalizing approval of South Carolina's SIP revision to Regulation 61–62.5, Standard No. 2—*Ambient Air Quality Standards,* with a State effective date of April 24, 2020. Through this

[1] *See* 62 FR 27968 (May 22, 1997).

final action, EPA is incorporating those revisions into the SIP. EPA has determined that the April 24, 2020, SIP revision meets the applicable requirements of sections 110 of the CAA and applicable regulatory requirements at 40 CFR part 51.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section CAA section 307(b)(2).

Because this final rule merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this final rule for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 22, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart PP—South Carolina

■ 2. In § 52.2120, amend the table in paragraph (c) by revising the entry for ''*Standard No. 2*'' to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED SOUTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	* *	*	* *	*
Standard No. 2	Ambient Air Quality Standards	4/24/2020	9/30/2021, [Insert citation of publication].	
* *	* *	*	* *	*

* * * * *

[FR Doc. 2021–21047 Filed 9–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0405; FRL–8708–02–R7]

Air Plan Approval; Approval of Missouri Air Quality Implementation Plans; Revisions to St. Louis 1997 $PM_{2.5}$ Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by the State of Missouri on November 12, 2019, revising the maintenance plan demonstrating continued maintenance of the 1997 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) in the St. Louis area. This revision demonstrates that the St. Louis area no longer needs to rely on the vehicle Inspection and Maintenance (I/M) program and the use of Reformulated Gasoline (RFG) for continued maintenance throughout the maintenance period for the 1997 $PM_{2.5}$ NAAQS. The EPA has determined that this revision meets the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 1, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2021–0405. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Steven Brown, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7718; email address: *brown.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. What is being addressed in this document?

The EPA is taking final action to approve SIP revisions submitted by the State of Missouri on November 12, 2019, revising the 1997 $PM_{2.5}$ maintenance plan. This SIP revision demonstrates continued maintenance of the 1997 $PM_{2.5}$ NAAQS in the St. Louis area through the future year of 2025. The maintenance area boundary includes the Missouri counties of Franklin, Jefferson, St. Charles, and St. Louis along with the City of St. Louis.

Through this final action, the EPA is approving this maintenance plan into Missouri's SIP pursuant to the CAA section 175A as a replacement to the maintenance plan previously approved by EPA on October 2, 2018 (83 FR 38033).

On August 3, 2018, EPA published in the **Federal Register** a final rulemaking approving the State of Missouri's request to redesignate the Missouri portion of the St. Louis nonattainment area to attainment and their demonstration for maintaining the 1997 $PM_{2.5}$ NAAQS through the ten-year maintenance period. The effective date for this approval was on October 2, 2018 (83 FR 38033).

The SIP revision we are approving in this final rulemaking removes the reliance on the St. Louis vehicle Inspection and Maintenance (I/M) program and the use of Reformulated Gasoline (RFG) for continued maintenance of the 1997 $PM_{2.5}$ standard. To support this revision, Missouri utilized EPA's 2014 Motor Vehicle Emissions Simulator (MOVES2014b) emission modeling system to project revised mobile source emissions by removing emissions reductions related to I/M and RFG throughout the maintenance period to the future year of 2025.

EPA is approving this revised maintenance plan based on information provided in the emissions projections, modeling results and an evaluation of quality assured air monitoring data submitted as part of this revision and in a previously reviewed analysis as part of the St. Louis Nonattainment Area 1997 $PM_{2.5}$ NAAQS Redesignation rulemaking published on August 3, 2018 (83 FR 38033). Current and future projections of air quality and emissions data for this revision demonstrates maintenance for the 1997 $PM_{2.5}$ NAAQS.

This revision only affects maintenance for the 1997 $PM_{2.5}$ standard, only removes the reliance upon the I/M and RFG programs for continued maintenance and therefore meets the requirements of the Clean Air Act.

The full text of the plan revisions including Missouri's technical demonstration can be found in the State's submission, which is included in the docket for this action.

The EPA solicited comments on these proposed revision to Missouri's SIP published on July 28, 2021 (86 FR 40395), and did not receive any comments. Therefore, the EPA is finalizing the approval of these revisions to the SIP.

II. Have the requirements for approval of a SIP revision been met?

The State's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from July 29, 2019, through September 13, 2019, and received one comment from the Missouri Petroleum Marketers and Convenience Store Association, one comment from Abel Realty, and thirteen comments from EPA. After receiving comments, the State revised the SIP prior to submitting the plan to EPA. In addition, as explained above and in more detail in the Missouri submittal document, which is part of the docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is the EPA taking?

The EPA is taking final action to approve a SIP revision submitted by the State of Missouri on November 12, 2019, revising the 1997 $PM_{2.5}$ maintenance plan. EPA has determined that this revision does not interfere with attainment or maintenance of the NAAQS or with any other CAA requirement.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: September 22, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (e) is amended by adding the entry ''(80)'' in numerical order to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e)* * *

EPA-APPOVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(80) Revisions to St. Louis 1997 $PM_{2.5}$ Maintenance Plan.	St. Louis Area: Missouri counties of Franklin, Jefferson, St. Charles, and St. Louis along with the City of St. Louis.	11/12/2019	9/30/2021, [insert **Federal Register** citation].	This action replaces the Maintenance plan for the 1997 $PM_{2.5}$ (published in the **Federal Register** on October 2, 2018).

[FR Doc. 2021–20972 Filed 9–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA–R09–UST–2021–0597; FRL–8977–02–R9]

Approval of State Underground Storage Tank Program Revisions; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), as amended, the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Nevada's Underground Storage Tank (UST) program since the previous authorization on July 17, 1998. This action is based on the EPA's determination that these revisions satisfy all requirements needed for program approval. The State's federally authorized program, as revised pursuant to this action, will remain subject to the EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions.

DATES: This authorization is effective on November 29, 2021 without further notice, unless the EPA receives adverse comment by November 1, 2021. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the authorization will not take effect.

ADDRESSES: Submit any comments, identified by EPA–R09–UST–2021–0597, by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the

on-line instructions for submitting comments.

2. *Email: platukyte.simona@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA–R09–UST–2021–0597. The EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The Federal *https://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of 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. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

The EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance with additional submission methods.

You can view and copy the documents that form the basis for this action and associated publicly available materials through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Simona Platukyte, Project Officer, Underground Storage Tank Program, EPA Region 9, phone number (415) 972–3310, email address: *platukyte.simona@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 9 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as no mail, courier, or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Nevada's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

States that have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program equivalent to, consistent with, and no less stringent than the Federal underground storage tank program. When the EPA revises the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their underground storage tank program and these changes must then be approved by the EPA.

B. What decisions has the EPA made in this authorization?

On November 20, 2018, in accordance with 40 CFR 281.51(a), Nevada submitted a program revision application seeking the EPA's approval for its UST program revisions (State Application). On July 29, 2021, Nevada submitted amendments to the revision application, based on comments from the EPA. Nevada's revisions correspond to the EPA's final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: A transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, copies of all relevant state statutes and regulations, and an application addendum submitted on July 29, 2021. We have reviewed the State Application and determined that the revisions to Nevada's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Nevada program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Nevada final approval to operate its UST program with the changes described in the program revision application and as outlined below in Section I.G of this document.

C. What is the effect of this action on the regulated community?

This action does not impose additional requirements on the regulated community because the regulations being approved by this authorization are already in effect in the State of Nevada, and are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is the EPA using a direct final authorization?

The EPA is publishing this direct final authorization without a prior proposal because we view this as a noncontroversial action and we anticipate no adverse comment. Nevada did not receive any comments during its comment period when the rules and regulations being considered in this document were proposed at the State level.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final authorization, the EPA is publishing a separate document in the ''Proposed Rules'' section of this **Federal Register** that serves as the proposal to approve the State's UST program revisions, and provides an opportunity for public comment. If the EPA receives comments that oppose this approval, the EPA will withdraw this direct final authorization by publishing a document in the **Federal Register** before it becomes effective. The EPA will base any further decision on approval of the State Application after considering all comments received during the comment period. The EPA will then address all public comments in a later final authorization. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Nevada previously been approved?

On March 30, 1993, the EPA finalized a rule approving the UST program that Nevada proposed to administer in lieu of the Federal UST program. On July 17, 1998, the EPA codified the approved Nevada program that is subject to the

EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action and what standards do we use for review?

In order to be approved, each state program application must meet the general requirements in 40 CFR 281.11, and specific requirements in 40 CFR part 281, subpart B (Components of a Program Application), subpart C (Criteria for No Less Stringent), and subpart D (Adequate Enforcement of Compliance). This is also true for proposed revisions to approved state programs.

As more fully described below, the State has made the changes to its approved UST program to reflect the 2015 Federal Revisions. The EPA is approving the State's changes because they are equivalent to, consistent with, and no less stringent than the Federal UST program and because the EPA has confirmed that the Nevada UST program will continue to provide for adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D, after this approval. There remains a typographical error in NAC 445C.230, in the Cleanup of Discharged Petroleum section, which indicates that Nevada adopts by reference the relevant Federal regulations as they existed on July 1, 1990, rather than as they existed on October 13, 2015. The correct date is referenced in NAC 459.993, in the Storage Tanks section. Nevada's July 29, 2021 submittal describes the steps it will take to revise the regulation.

The Nevada Division of Environmental Protection (NDEP or Division) is the lead implementing agency for the UST program in Nevada, except in Indian country.

NDEP continues to have broad statutory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases under selected provisions from Nevada Revised Statutes (NRS), Chapters 233B, Nevada Administrative Procedures Act; Chapter 439 Administration of Public Health; Chapter 445A, Water Controls; and Chapter 459, Hazardous Materials. The Nevada UST Program gets its enforcement authority from the powers of the Nevada State Environmental Commission found at NRS 445A.675, 445A.690, 459.842, 459.844, 459.846, 459.848, 459.850, 459.852. 459.854 and 459.856 and administrative rules under the Nevada Administrative Code (NAC) at NAC 459.9941 through 459.9944 regarding delivery prohibition.

Specific authorities to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, are found under NRS 459, in addition to the regulatory provisions of NAC 459 and selected sections from NAC 445A, effective November 2, 2018; Reporting and recordkeeping requirements are also found in selected provisions of NAC 459. The aforementioned statutory and regulatory sections satisfy the requirements of 40 CFR 281.40 and 281.41.

Through a Memorandum of Agreement between the State of Nevada and the EPA, signed by the EPA Region 9 Regional Administrator April 3, 2019, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The State agrees to comply with public participation provisions contained in 40 CFR 281.42 by incorporating by reference the Federal provisions at NAC 459.993 and providing authority to hold hearings as deemed necessary to obtain public testimony at NAC 445.22755.

To qualify for final approval, revisions to a state's program must be ''equivalent to, consistent with, and no less stringent'' than the 2015 Federal Revisions. In the 2015 Federal Revisions, the EPA addressed UST systems deferred in the 1988 UST regulations, and added, among other things, new operation and maintenance requirements; secondary containment requirements for new and replaced tanks and piping; operator training requirements; and a requirement to ensure UST system compatibility before storing certain biofuel blends. In addition, the EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems. The EPA analyzes revisions to approved state programs pursuant to the criteria found in 40 CFR 281.30 through 281.39.

The Division has revised its regulations to help ensure that the State's UST program revisions are equivalent to, consistent with, and no less stringent than the 2015 Federal Revisions. In particular, the Division has amended the NAC to incorporate the revised requirements of 40 CFR part 280, including the requirements added by the 2015 Federal Revisions. The State, therefore, has ensured that the criteria found in 40 CFR 281.30 through 281.38 are met.

Title 40 CFR 281.39 describes the state operator training requirements that must be met in order to be considered equivalent to, consistent with, and no less stringent than Federal requirements. Nevada has incorporated by reference the Federal requirements at NAC 459.993 with certain additional provisions at NAC 459.99395(1) and (2). After a thorough review, the EPA has determined that Nevada's operator training requirements are equivalent to, consistent with, and no less stringent than Federal requirements.

As part of the State Application, the Senior Deputy Attorney General for the Division certified that the laws of the State provide adequate authority to carry out the ''no less stringent'' technical requirements submitted by the state in order to meet the criteria in 40 CFR 281.30 through 281.39. The EPA is relying on this certification in addition to the analysis submitted by the State in making our determination.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by Federal law, the additional coverage is considered ''broader in scope'' and is not part of the federally-approved program and are not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following regulatory requirements are considered broader in scope than the Federal program as these State-only regulations are not required by Federal regulation and are implemented by the State in addition to the federally approved program: NAC 459.99285, which provides the State-only definition of ''marina storage tank,'' is outside the scope of the Federal program because these types of tanks do not fall under the applicability of the UST program; and NAC 445.2271 and 445A.2273, which deal with specific types of corrective action plans, contain references that are outside the scope of the Federal UST program with respect to contamination by hazardous waste, which is regulated under RCRA Subtitle C. Nevada also has multiple additional state-only provisions at NAC 459.9933 through 459.9938 that only apply to marina storage tanks. Marina storage tanks are defined as a type of aboveground storage tank and these types of tanks are broader in scope than the Federal RCRA Subtitle I program.

The following statutory provisions are considered broader in scope than the Federal program: Nevada Revised Statutes (NRS) Chapter 445C, Environmental Requirements, Cleanup of Discharged Petroleum is broader in scope than the Federal program because this provision concerns the relocation of the State's Petroleum Fund, a State-only

fund; NRS 459.812(2) and 459.820(2) are broader in scope than the Federal underground storage tank program because these particular definitions are exclusive to aboveground storage tanks; and NRS 459.836(3), 459.838, and 459.840 are broader in scope than the Federal program because they are applicable to certain State-only fees and funds, and fees and funds are not included in the Federal program and are broader in scope.

More Stringent Provisions

Where an approved state program includes requirements that are considered more stringent than required by Federal law, the more stringent requirements become part of the federally-approved program (40 CFR 281.12(a)(3)(i)).

The following regulatory requirements are considered more stringent than the Federal program, and on approval, they become part of the federally-approved program and are federally enforceable:

NAC 459.9945 requires secondary containment of tanks beginning with those installed on or after July 1, 2008, which is more stringent than the Federal program that subjected tanks to the secondary containment requirement in 2015;

NAC 459.994 includes an additional provision related to tank tightness testing that is more stringent than the Federal program (for example, NAC 459.994(2) requires the testing to be performed by a contractor certified by the Division and that a certificate issued by the contractor be retained by the owner or operator, and NAC 459.994(3) allows the testing to be waived for ''abandoned underground storage tanks'' if there is a threat to human health or the environment.);

NAC 445A Water Controls, section 445A.22695(1) requires ''immediate action . . . under certain circumstances; Director may waive certain requirements'', which is more stringent than the Federal program because Nevada requires immediate action in certain circumstances where the Federal program does not; and

NAC 445A.227 and 445A.22725, which include a provision that the Director may consider certain factors when determining whether a corrective action is required, making the State provisions more stringent than the Federal program because Nevada may require owners/operators to take corrective action in circumstances not required by the Federal program.

I. How does this action affect Indian country (18 U.S.C. 1151) in Nevada?

The EPA's approval of Nevada's Program does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country generally includes any land held in trust by the United States for an Indian tribe, and any other areas that are ''Indian country'' within the meaning of 18 U.S.C. 1151. Any lands removed from an Indian reservation status by Federal court action are not considered reservation lands even if located within the exterior boundaries of an Indian reservation. The EPA will retain responsibilities under RCRA for underground storage tanks in Indian country. Therefore, this action has no effect in Indian country. See 40 CFR 281.12(a)(2).

II. Statutory and Executive Order (E.O.) Reviews

This action only applies to Nevada's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows.

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

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, Oct. 4, 1993) and 13563 (76 FR 3821, Jan. 21, 2011). This action approves State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

B. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

C. Executive Order 13132: Federalism

This action will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999), because it merely approves State requirements as part of the State RCRA Underground Storage Tank Program without altering the relationship or the distribution of power and responsibilities established by RCRA.

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

This action also is not subject to Executive Order 13045 (62 FR 19885, Apr. 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

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

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

F. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), the EPA grants a state's application for approval as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

G. Executive Order 12988: Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this authorization, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

H. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

The EPA has complied with Executive Order 12630 (53 FR 8859, Mar. 15, 1988) by examining the takings implications of the authorization in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order.

I. Paperwork Reduction Act

This authorization does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b).

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

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this authorization approves pre-existing State rules which are at least equivalent to, consistent with, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the authorization is not subject to Executive Order 12898.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). However, this action will be effective November 29, 2021 because it is a direct final authorization.

Authority: This authorization is issued under the authority of sections 2002(a), 7004(b), and 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Parts 281 and 282

Environmental protection, Administrative practice and procedure, Hazardous substances, State program approval, and Underground storage tanks.

Dated: September 19, 2021.

Deborah Jordan,

Acting Regional Administrator, Region 9.

[FR Doc. 2021–20859 Filed 9–29–21; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

RIN 3145–AA62

Conservation of Antarctic Animals and Plants; Correction

AGENCY: National Science Foundation.

ACTION: Final rule; correction.

SUMMARY: This document corrects the Regulation Identification Number that appeared in a final rule published in the **Federal Register** on May 25, 2021, regarding changes to the list of designated historic sites or monuments (HSM) in Antarctica.

DATES: This final rule correction is effective September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Bijan Gilanshah, Assistant General Counsel, Office of the General Counsel, at 703–292–8060, National Science Foundation, 2415 Eisenhower Avenue, W 18200, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

Correction

In final rule FR Doc. 2021–10808, beginning on page 27989 in the issue of May 25, 2021, make the following correction: On page 27989, in the first column, the Regulation Identifier Number is corrected to read ''RIN 3145–AA62.''

Dated: September 23, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–21079 Filed 9–29–21; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 806

RIN 2900–AQ21

VA Acquisition Regulation: Competition Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in Federal Acquisition Regulation (FAR), to move procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. This rulemaking revises VAAR coverage concerning Competition Requirements.

DATES: This rule is effective on November 1, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 382–2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: These changes seek to align the VAAR with the FAR, remove outdated and duplicative requirements, and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency procedural guidance. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, VA will publish them in the **Federal Register**.

On February 1, 2019, VA published a proposed rule in the **Federal Register** (84 FR 1041) which announced VA's intent to amend regulations for VAAR Case RIN 2900–AQ21—VA Acquisition Regulation: Competition Requirements. VA provided a 60-day comment period for the public to respond to the proposed rule and submit comments. The comment period for the proposed rule ended on April 2, 2019, and VA received comments from six respondents. This rule adopts as a final rule the proposed rule published in the **Federal Register** on February 1, 2019, with the exception of minor formatting/grammatical edits and a few non-substantive edits, which are described below.

In particular, this final rule adds section 806.004–70, Definition, to establish that as used in part 806,

''health-care resource(s)'' has the same definition as that provided in VAAR 873.102.

This final rule adds subpart 806.1—Full and Open Competition, and section 806.102, Use of competitive procedures, to address the application of 38 U.S.C. 8127 to competitive General Services Administration (GSA) and VA Federal Supply Schedules.

This rule also adds subpart 806.2—Full and Open Competition After Exclusion of Sources, which contains two sections: 806.203, Set-asides for small business concerns, which directs attention to subparts 819.5 and 819.70 for VA's policies on set-asides for small business concerns, and 806.270, Set-asides for verified Veteran-owned small businesses. This rulemaking, in section 806.270, sets forth VA's authority under VA's supplement to FAR part 6—VAAR part 806, and the requirement mandated by 38 U.S.C. 8127(d)—referred to as the VA Rule of Two, to conduct set-asides for Veteran-owned small businesses whenever market research provides the contracting officer with a reasonable expectation of receiving two or more offers/quotes from eligible and verified service-disabled veteran-owned small businesses (SDVOSBs) or veteran-owned small businesses (VOSBs), and award can be made at a fair and reasonable price that offers best value to the Government. This section also states that the requirement to set aside procurements for Veteran-owned small businesses applies to all contracts under this regulation, including orders under interagency acquisition vehicles such as the Federal Supply Schedules (FSS).

As a part of this rulemaking, subpart 806.3—Other Than Full and Open Competition, is revised to add specific reference to VA's authority for noncompetitive procedures for verified Veteran-owned small businesses and to clarify existing authorities regarding such noncompetitive procedures. The revised subpart also clarifies existing statutory authority for other VA unique authorities and updates new Title 41 citations and other specific citation requirements.

This final rule amends section 806.302, Circumstances permitting other than full and open competition, to add several sections. This rule also revises section 806.302–5, Authorized or required by statute, to remove its text and retain the title. The removed text has been revised and moved to section 806.302–571.

Under section 806.302–5, this final rule adds two sections: 806.302–570 and 806.302–571. Section 806.302–570, Noncompetitive procedures for verified Veteran-owned small businesses, provides coverage of the authority to enter into contracts non-competitively, when specifically authorized under the VA Veterans First Contracting Program in accordance with VAAR 819.7007 or 819.7008.

Section 806.302–571, Authorized or required by statute—VA unique authorities, contains the statutes previously listed in 806.302–5 and provides policy under the statutes to make awards by other than full and open competition. Paragraph (a) provides the updated Title 41 authority—41 U.S.C. 3304(a)(5), updated from the moved coverage under 806.302–5. Paragraph (b)(1) provides that full and open competition is not required for the acquisition of prosthetic appliances and services based on the authority under 38 U.S.C. 8123. Paragraph (b)(2) provides the existing policy for the acquisition of commercial health-care resources, use of medical equipment or space, or research acquired from an institution affiliated with VA under the authority set forth in 38 U.S.C. 8153(a)(3)(A). Paragraph (b)(3) includes policy for the acquisition of commercial health-care resources, the use of medical equipment or space from other than an affiliated institution, but only when conducted in accordance with simplified procedures in VAAR part 873, Simplified Acquisition Procedures for Health-Care Resources, under the authority set forth in 38 U.S.C. 8153(a)(3)(B). Paragraph (b)(4) provides the authority under 38 U.S.C. 8153(a)(3)(C)-(D) for the sole source acquisition of commercial health-care resources, the use of medical equipment or space, when not acquired from an affiliated institution in accordance with paragraph (b)(2).

Section 806.302–571, paragraph (c), requires that contracts awarded using the authority set forth under paragraph (a), with the exception of acquisitions authorized under paragraph (b)(2) of this section, shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304.

Section 806.302–571, paragraph (d), incorporates an updated Title 41 citation reference: 41 U.S.C. 3304(a)(5); defines specific authorities that permit VA to procure certain supplies and services as sole source awards; and requires contracting officers, pursuant to FAR 6.302–5(c)(2)(ii), to comply with written justification and approval requirements set forth in FAR 6.303 and 6.304, citing 41 U.S.C. 3304(a)(5) and the applicable statute. Specifically, section 806.302–571(d) contains authorities previously under section 806.302–5 and continues existing policy to allow VA to enter into contracts for the cited types of supplies and services under this section.

This rulemaking removes section 806.302–7, Public interest, as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and moves the coverage to the VAAM.

This final rule also removes section 806.304, Approval of the justification, as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and which will be moved to the VAAM.

The proposed rule revised subpart 806.5—Competition Advocates to amend the title to ''Advocates for Competition'' to conform to the revised title in FAR part 6. The proposed rule also revised section 806.501, Requirement, to identify the Deputy Senior Procurement Executive as the VA Advocate for Competition. However, subsequent to publication of the proposed rule, VA organizational changes resulted in the need to update the title of who in VA is assigned the role of the VA Advocate for Competition. This is now updated in this final rule as described in item six in the Technical Non-Substantive Changes section of the preamble.

This final rule removes section 806.570, Planning requirements, as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and the coverage has been moved to the VAAM.

VA provided a 60-day comment period for the public to respond to the proposed rule. As stated previously, VA received comments from six respondents.

A summary of the comments and the issues raised are provided as follows:

One commenter posted a general comment regarding advances in health care in what appears to be part of an academic exercise. VA appreciates the comment. As the comment does not specifically address issues with the proposed rule, VA is making no revisions as a result of the comment.

Another respondent suggests that moving items into the VAAM and eliminating Information Letters (ILs) and various procedural guidance is a positive move. They also note that the VAAM is a better alternative than continued reliance on sub-agency procurement manuals. VA appreciates the comment on the proposed rule. The VAAR/VAAM project objective is to remove procedural guidance that is internal to VA and move it into the VA

Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The comment does not require the VA to make any revisions to the proposed rule.

The third commenter submits that the Class Deviations and other guidance issued by VA in response to the Supreme Court's decision in *Kingdomware Technologies, Inc.* v. *United States,* 136 S. Ct. 1969 (2016), recognize that the Javits-Wagner-O'Day Act's (JWOD) mandatory requirement to purchase from the Procurement List is capable of coexisting with the VA Rule of Two. The commenter states that the current guidance provides that the products and services on the AbilityOne Procurement List are mandatory sources but the VA Rule of Two is to be applied before adding new VA requirements to the Procurement List. To avoid any doubt that the February 9, 2018, class deviation is still in effect, the commenter urges the VA to clarify that VAAR 806.270 does not supersede VAAR 808.002 or the February 9, 2018, class deviation.

VA appreciates the comments. The respondent's comments concerning mandatory sources are appropriately addressed in the proposed rule pertaining to VAAR part 808 and related clauses and provisions. Since the rule (RIN 2900–AQ21) was published for public comment, new legislation impacting AbilityOne was signed into law on August 8, 2020 (see further description regarding this below and the class deviation to VAAR 808.002 issued on August 14, 2020, that addresses the priority of the AbilityOne program in relation to the Veterans First Contracting Program, with certain exceptions). As these comments do not pertain to the language and text in this rule for VAAR part 806, VA is making no changes based on these comments.

The fourth respondent also commented on this rule and its relation to AbilityOne, supporting the primacy of JWOD as a mandatory source and states that ''this section of the VAAR should also recognize that non-mandatory source competition is not required where a mandatory source applies, and that the JWOD, and other statutes, direct agencies to purchase certain products and services from mandatory sources.'' The commenter also recommends revising the part to recognize that specified sources include the mandatory sources identified in FAR 8.002, 8.004, and subpart 8.7.

While VA appreciates the feedback from the respondents on this proposed rule, the Veterans First Contracting Program was updated as a result of amendments to 38 U.S.C. 8127 by Public Law 116–155, the Department of Veterans Affairs Contracting Preference Consistency Act of 2020, signed August 8, 2020, which requires the use of mandatory Government sources under the AbilityOne program for covered products and services except for certain previously awarded contracts to service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) after December 22, 2006, and in effect August 7, 2020. This is implemented in VAAR 808.002(a)(1)(iv) and (a)(2). VA originally issued a Class Deviation on August 14, 2020, to make this change pending publication of a rule; this deviation was rescinded and replaced with Class Deviation from VA Acquisition Regulation part 808, Required Sources of Supplies and Services, dated July 20, 2021. The priorities for use of mandatory Government sources are covered by FAR part 8 and VAAR part 808, respectively. The language as set forth in VAAR part 806 and specifically at VAAR 806.270 fully comports with VA's requirements under VAAR part 808. VA will not revise the final rule as a result of this comment. Note: VA is also planning an interim rule which would include a pointer at subpart 819.5 back to 808.002(a)(1)(iv) and (a)(2) regarding the AbilityOne program to ensure contracting officers and the public are reminded of the priority use of the AbilityOne program as set forth in VAAR 808.002.

The next respondent had multiple comments and the VA will address each in order. After first commending VA for its thoughtful development of the proposed rule, the commenter recommends that VAAR 806.501 be revised to include the actual list of Advocates for Competition. The commenter also states that VAAR 806.501 could be further improved by including a requirement to identify the cognizant SBA Procurement Center Representative, the VA Ombudsman, and the VA Advocate for Competition in each solicitation above the simplified acquisition threshold.

VA has considered this suggestion but requiring each solicitation or contract to include a list is beyond the requirements of FAR 6.501 that VA is implementing at VAAR 806.501. However, VA is making available a complete list of VA procuring activity Advocates for Competition on its website that will be available when the final rule is published. Therefore, VA is making no changes to the proposed rule as a result of this comment.

The next comment recommended revisions to VAAR 806.270; specifically, that VAAR 806.270 be modified to exclude references to Class Deviation provisions and that VA remove the reference to ''the VA Rule of Two (see 802.101)'' from the final version of VAAR 806.270 as the definition of ''VA Rule of Two'' was not added to VAAR 802.101 via the required notice and public comment rulemaking process.

VA appreciates the comment and responds that the VA Rule of Two is a term that is defined and incorporated into 802.101 under a Class Deviation and it will be incorporated into part 802 as a part of a future proposed rule. Nevertheless, to avoid any confusion, section 806.270 has been revised to remove the reference, ''see 802.101.''

The respondent also comments that the VAAR must fully implement the Vets Act Priority for SDVOSBs first, and then VOSBs. The commenter states VA should further explain how contracting officers give full credit and partial credit for VOSBs and to address its use in Lowest Priced Technically Acceptable (LPTA) procurements that do not permit tradeoffs. They believe that a new provision should be added to VAAR 852.215–70.

VA appreciates the comments. The respondent's comments concerning 852.215–70 were appropriately addressed in the rule RIN 2900–AQ20 pertaining to VAAR part 815 and related clauses and provisions. Therefore, as these comments do not pertain to the language and text in this rule for VAAR part 806, VA is making no changes based on these comments. However, VA is clarifying section 806.270 to make clear that the statute's required set aside priorities are for SDVOSBs first, then VOSBs by adding the words ''first, then . . .'' after ''(SDVOSBs)'', and removing the word ''and'' so that it now reads, ''. . . verified service-disabled Veteran-owned small businesses (SDVOSBs) first, then Veteran-owned small businesses (VOSBs).'' This clarification is consistent with 38 U.S.C. 8127.

The same respondent recommends the proposed rule should be revised as a reference in the preamble of the proposed rule to additional internal requirements is problematic in their opinion. When VA issues the final rule, it should explain in the preamble that the only requirements for a VA contracting officer to issue a sole source contract under the Vets Act are as specified in the text of VAAR 806.302–570, and there are no unspecified agency procedures or class deviations

that would restrict or water down this unique and important tool.

VA appreciates the opportunity to make clear the requirements of this section and what is set forth in the preamble. VA's internal procedures, including review and approval thresholds, are properly contained in the VAAM as authorized by FAR 1.301(a)(2) which authorizes an agency head to issue or authorize the issuance of internal agency guidance. While 38 U.S.C. 8127(c) provides the authority for when awards to such sole source concerns may be made, VA implements required internal review and approval oversight procedures as necessary. Therefore, VA makes no changes to the rule on the basis of these comments.

The same commenter asserts that VA should provide Contracting Officers guidance regarding what constitutes a fair and reasonable price.

VA notes that guidance on how to conduct a price analysis and establish a fair and reasonable price determination is already addressed in the FAR. Specifically, FAR subpart 15.4, Contract Pricing, provides guidance to contracting officers to assist in making a fair and reasonable price determination. Additional internal agency guidance would be contained in the VA Acquisition Manual. However, VA acknowledges this is an area of interest for the public as well as VA's acquisition workforce. VA is preparing additional internal training for its acquisition workforce to strengthen contracting officers' skillset in this area. VA is making no changes to the rule based on these comments.

The same commenter recommends VA revise VAAR 806.302–570(a) to state that the sole source contract shall be supported ''by the applicable justification and approval requirements of FAR 6.302–5(c)(2)(ii), 6.303, and 6.304.''

VA has considered the comment and concurs that the VA legislation provides a unique sole source authority that is less restrictive than a sole source award otherwise permitted under FAR 6.302–1, ''Only one responsible source and no other supplies or services will satisfy agency requirements.'' Accordingly, section 806.302–570(a) has been revised to add the word ''applicable'' as noted in the amendatory language with respect to the content of the justification requirements.

The next comment takes issue with the language ''without regard to any other provision of law'' in VAAR 806.302–571(b)(1) and believes that the other proposed sections of this rule may create confusion as to whether this sole source authority trumps the Vets Act requirements for VA to give priority to SDVOSBs and VOSBs in all VA contracts. They go on to state, ''The sole source authorities cited in VAAR 806.302–571 do not trump the VA's obligations under the Vets Act. For example, 38 U.S.C. 8123 provides, permissively, that VA may procure prosthetic appliances . . . without regard to any other provision of law.'' They submit that by contrast, the Vets Act includes broader language that mandates VA give priority to SDVOSBs and VOSBs.

VA does not concur with the respondent's assessment and will make no change based on these comments. The legislative language provides VA broad discretion in certain types of procurements ''without regard to any other provision of law.''

The last respondent provides the following positive comments regarding the proposed rule: ''. . . strongly supports the VA in their efforts to create more flexibility in the contracting process as well as efforts to reorganize the community care programs through the MISSION Act of 2018.''

VA appreciates the comment. The comment does not require VA to make any revisions to the proposed rule as the comments do not apply to this rule.

Technical Non-Substantive Changes to the Proposed Rule

This rule makes six non-substantive changes to the proposed rule to provide clarity, eliminate confusion, and to ensure compliance with statute and VA's authority.

1. Under section 806.270, Set-asides for verified Veteran-owned small businesses, VA has revised the language to remove the phrase ''including Governmentwide acquisition contracts (GWACs)'' as unnecessary to set forth specifically further types of contract vehicles.

2. Under section 806.302–571, Authorized or required by statute—VA unique authorities, VA has revised the language in paragraph (b)(1) to remove the phrase at the end of the subparagraph: ''as set forth in VA directives governing prosthetic appliances, sensory aids and services supporting the same . . .'' as unnecessary. VA contracting officers are already required to follow VA directives and are internal operating procedures.

3. Under section 806.302–571, paragraph (b)(2), VA is revising the language to provide clarity by: Adding ''Acquisition of resources from'' in the first sentence before ''medical practice groups'' and to remove ''affiliated'' before ''institution affiliated with VA.''

4. Under section 806.302–571, at paragraph (b)(3), VA is removing the phrase ''only if the procurement is conducted'' as too restrictive to VA's procurement authority in various statutes and to ensure clarity. In paragraph (b)(4), VA is revising the authority citation at the end of the paragraph to add ''(D)'' at the end so that it now reads: (38 U.S.C. 8153(a)(3)(C)–(D)).

5. Under section 806.302–571, paragraph (c), VA is making minor grammatical edits to provide clarity by revising the first sentence so that ''this authority'' now reads ''an authority'' and by adding the words, ''in this section'' so that the intro to the sentence now reads: ''Contracts awarded using an authority in this section, . . .''.

6. Under subpart 806.5, Advocates for Competition, and the underlying section 806.501, Requirement, the section is updated to reflect a new organization role and title, to clarify the authority to appoint an alternate agency advocate for competition, and add the requirement to designate procuring activity advocates for competition in accordance with FAR 6.501. The section has been updated to remove the title of Deputy Senior Procurement Executive (DSPE) to reflect the official organizational title of the Associate Executive Director, Office of Procurement Policy, Systems and Oversight (AED/PPSO) and to add ''for the agency'' after the phrase ''VA Advocate for Competition.'' The delegated authority is clarified that the AED/PPSO may further delegate the authority to appoint an alternate agency advocate for competition, and to add ''shall designate procuring activity advocates for competition in accordance with FAR 6.501.''

Executive Orders 12866 and 13563

Executive Orders (EOs) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts, and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a

supporting document at *www.regulations.gov.*

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The rule primarily affects the use of authorities that VA contracting officers are already authorized by statute to utilize when required and in accordance with existing agency regulation, policies and procedures. This rule appropriately clarifies and revises the use of such authorities and when certain justification and approval requirements apply. The authorities were previously codified in the VAAR either in this part or in other parts, to include those affecting small business programs, and they affected both large and small entities alike. With this rule, VA ensures content to supplement the FAR for VA's unique service-disabled veteran-owned small business and veteran-owned small business program is properly implemented in this part.

The overall impact of the rule is of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating processes or procedures. This rule will ensure clarity for both the public and VA contracting officers to ensure that when such authorities are utilized, they are properly cited and, when required, appropriately documented and publicized. This rulemaking does not change VA's policy regarding small businesses. VA estimates that no cost or economic impact to individual businesses will result from this rule update. VA estimates this final rule is not expected to result in increased or decreased costs to small business entities, and no more than *de minimis* costs. On this basis, the final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal Governments or on the private sector.

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

List of Subjects in 48 CFR Part 806

Government procurement.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on September 1, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA revises 48 CFR part 806 to read as follows:

PART 806—COMPETITION REQUIREMENTS

Sec.

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; 41 U.S.C. 3304; and 48 CFR 1.301 through 1.304.

806.004–70 Definition.

As used in this part—

Health-care resources has the same definition as that provided in 873.102.

Subpart 806.1—Full and Open Competition

806.102 Use of competitive procedures.

(d)(3) Awards made using General Services Administration (GSA) or Department of Veterans Affairs (VA) Federal Supply Schedules (FSS) are considered competitive when awarded in accordance with the procedures specified in FAR part 8 and this part.

Subpart 806.2—Full and Open Competition After Exclusion of Sources

806.203 Set-asides for small business concerns.

(c) Subparts 819.5 and 819.70 prescribe the policies and procedures that shall be followed with respect to set-asides for small business and Veteran-owned small business concerns.

806.270 Set-asides for verified Veteran-owned small businesses.

(a) To fulfill the statutory requirements relating to Public Law 109–461, the Veterans Benefits, Health Care and Information Technology Act of 2006 (38 U.S.C. 8127–8128), contracting officers shall set aside solicitations in accordance with subpart 819.70 and the VA Rule of Two for Vendor Information Pages (VIP) verified service-disabled Veteran-owned small businesses (SDVOSBs) first, then Veteran-owned small businesses (VOSBs) (see 819.7005 and 819.7006). (38 U.S.C. 8127–8128)

(b) The requirement in this section to set aside procurements for VIP verified SDVOSBs and VOSBs applies to all types of contracts, including orders placed under GSA's Federal Supply Schedules (FSS) and indefinite-delivery contracts. (38 U.S.C. 8127–8128)

Subpart 806.3—Other Than Full and Open Competition

806.302 Circumstances permitting other than full and open competition.

806.302–5 Authorized or required by statute.

806.302–570 Noncompetitive procedures for verified Veteran-owned small businesses.

(a) *Sole source awards made to a verified SDVOSB or VOSB.* Full and open competition need not be provided for when awarding a sole source

contract under paragraph (b) or (c) of this section, to a verified SDVOSB or VOSB in accordance with 819.7007 or 819.7008, respectively, as authorized. Contracts awarded using the authority in this paragraph (a) shall be supported by the applicable justification and approval requirements of FAR 6.302–5(c)(2)(ii), 6.303, and 6.304.

(b) *Sole source awards below the simplified acquisition threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(b)). A contracting officer may award a contract under the authority in this paragraph (b) to a VIP verified SDVOSB first, then VOSB if no SDVOSBs can fulfill the need, for an amount less than the simplified acquisition threshold, using procedures other than full and open competition. (38 U.S.C. 8127)

(c) *Sole source awards above the simplified acquisition threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(c)). A contracting officer may award a contract to a VIP verified SDVOSB first, then VOSB if no SDVOSB can satisfy the need, using procedures other than full and open competition when—

(1) Such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) The anticipated award price of the contract (including options) will exceed the simplified acquisition threshold, but will not exceed $5 million; and

(3) Contract award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127)

806.302–571 Authorized or required by statute—VA unique authorities.

(a) *Authority.* (1) *Citation:* 41 U.S.C. 3304(a)(5). Contracting officers shall also cite the specific authorities in paragraph (b) of this section for the statutes related to the products and services procured.

(2) Full and open competition need not be provided for when a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source.

(b) *Application.* The following products and services are authorized to be acquired from a specified source:

(1) *Prosthetic appliances and services.* Contracting activities may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as determined to be proper, without regard to any other provision of law. (38 U.S.C. 8123)

(2) *Commercial health-care resources, the use of medical equipment or space, or research, and acquired from an institution affiliated with the Department of Veterans Affairs.* Contracting activities may procure health care resources, including resources from medical practice groups and other approved entities associated with affiliated institutions, blood banks, organ banks, or research centers from an institution affiliated with VA in accordance with 38 U.S.C. 7302. Acquisition of resources from medical practice groups and other entities shall be approved when determined by the contracting activity to be legally associated with affiliated institutions in accordance with 38 U.S.C. 7302. The justification and approval requirements of FAR 6.303 and paragraph (c) of this section do not apply. (38 U.S.C. 8153(a)(3)(A))

(3) *Commercial health-care resources, the use of medical equipment or space, and is not to be acquired from an entity described in paragraph (b)(2) of this section.* Contracting activities may procure health care resources from a non-affiliated institution in accordance with the simplified procedures prescribed in part 873. The justification and approval requirements of FAR 6.303 shall apply. (38 U.S.C. 8153(a)(3)(B))

(4) *Commercial health-care resources, the use of medical equipment or space, when not acquired from an affiliated institution described in paragraph (b)(2) of this section and to be conducted on a sole source basis.* The authority in this paragraph (b)(4) applies if not acquired from an affiliated institution in accordance with part 873. The justification and approval requirements of FAR 6.303 shall apply. (38 U.S.C. 8153(a)(3)(C)–(D))

(c) *Written justifications and approvals.* Contracts awarded using an authority in this section, with the exception of acquisitions authorized under paragraph (b)(2) of this section, shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304.

(d) *Citation of specific authorities.* When a contracting officer enters into a contract without providing full and open competition for any of the following items or services, the contracting officer must cite 41 U.S.C. 3304(a)(5) and the following authorities that apply, in the written justifications and approvals as required by FAR 6.303 and 6.304:

(1) *Contracts for scarce medical specialist services.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7409.) Contracting officers may enter into contracts with:

(i) Schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing;

(ii) Clinics; and

(iii) Any other group or individual capable of furnishing such scarce medical specialist services at VA facilities, to include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel. (38 U.S.C. 7409)

(2) *Contracts or agreements to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service.* (*Citation:* 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7802(f).) Contracts or agreements may be entered into without regard to 41 U.S.C. 6101(b) through (d).

(3) *Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 8109(b).* (*Citation:* 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8109(f).) Contracts or leases may be entered into provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee.

(4) *Contracts for laundry and other common services, such as the purchase of steam, negotiated with non-profit, tax-exempt educational, medical, or community institutions.* (*Citation:* 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8122(c).) Contracts may be entered into when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources.

(5) *Contracts or agreements with private or public agencies or persons for translator services.* (*Citation:* 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 513.)

Subpart 806.5—Advocates for Competition

806.501 Requirement.

The Associate Executive Director, Office of Procurement Policy, Systems and Oversight (AED, PPSO) is designated as the VA Advocate for Competition for the agency. The AED, PPSO may further delegate the authority in this section to appoint an alternate agency advocate for competition and shall designate procuring activity advocates for competition in accordance with FAR 6.501. A complete list of VA procuring activity advocates for competition can be found at *https://*

www.va.gov/oal/business/pps/competition-advocates.asp.

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DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 852 and 873

RIN 2900–AQ78

VA Acquisition Regulation: Simplified Procedures for Health-Care Resources

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove any procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. This rulemaking revises VAAR coverage concerning Simplified Procedures for Health-Care Resources as well as an affected part concerning Solicitation Provisions and Contract Clauses.

DATES: This rule is effective on November 1, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 894–0686. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, will publish them in the **Federal Register**.

On January 21,2021, VA published a proposed rule in the **Federal Register** (85 FR 35238) which announced VA's intent to amend regulations for VAAR Case RIN 2900–AQ78—Simplified Procedures for Health-Care Resources. VA provided a 60-day comment period for the public to respond to the proposed rule and submit comments. The comment period for the proposed rule ended on March 22, 2021, and VA received comments from three respondents. This rule adopts as a final rule the proposed rule published in the **Federal Register** on January 21, 2021, with the exception of minor formatting edits.

VA received three comments from the public. Two commenters expressed support for the rule—with one of the respondents stating that the streamlined procedures will help Veterans and the other respondent expressing the opinion that amending the VAAR by removing outdated and superseded information would allow for a more concise understanding of the regulation. VA appreciates this feedback. As a result of these comments, no changes have been made to the rule.

The third respondent commented on the rules' coverage at 873.104, Competition requirements, permitting VA to contract on a sole source basis with affiliated institutions for commercial health-care resources. In particular, the respondent expressed their view that a sole source justification should be published and that competitive proposals should be considered.

VA appreciates the feedback. This comment pertains to a specific statutory exception provided by Congress for VA to be able to contract with affiliated institutions in accordance with 38 U.S.C. 7302, on a sole source basis as provided by 38 U.S.C. 8153(a)(3)(A), without publication of a justification for health-care resources. VA policy encourages competition where appropriate. When sole source acquisitions are necessary to meet critical mission needs, justification and approvals are publicized as required in accordance with law and regulation. However, as 38 U.S.C. 8153 expressly provides this unique exception for VA's work with affiliated institutions to provide Veteran's critical healthcare, no revisions will be made to the proposed rule.

Executive Orders 12866 and 13563

Executive Orders (EOs) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts, and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The rule primarily affects the use of authorities that VA contracting officers are already authorized by statute to utilize when required and in accordance with existing agency regulation, policies and procedures. This rule appropriately clarifies and revises the use of such authorities and when certain justification and approval requirements apply. The authorities were previously codified in the VAAR either in this part or in other parts, to include those affecting small business programs, and they affected both large and small entities alike. With this rule, VA ensures content to supplement the FAR for VA's unique service-disabled veteran-owned small business and veteran-owned small business program is properly implemented in this part.

The overall impact of the rule is of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating processes or procedures. This rule will ensure clarity for both the public and VA contracting officers to ensure that when such authorities are utilized, they are properly cited and, when required, appropriately documented and publicized. This rulemaking does not change VA's policy regarding small businesses. VA estimates that no cost or economic impact to individual businesses will result from this rule update. VA estimates this final rule is not expected to result in increased or decreased costs to small business entities, and no more than *de minimis* costs. On this basis, the final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of

anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule will have no such effect on State, local, and tribal Governments or on the private sector.

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

List of Subjects

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 873

Government procurement.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on August 24, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 48 CFR parts 852 and 873 as follows:

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authorities for part 852 continue to read as follows:

Authority: 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 852.2—Text of Provisions and Clauses

■ 2. Section 852.273–70 is revised to read as follows:

852.273–70 Late Offers.

As prescribed in 873.110(a), insert the following provision:

Late Offers (Nov 2021)

This provision replaces paragraph (f) of FAR provision 52.212–1, Instructions to Offerors—Commercial Items. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the Contracting Officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of provision)

■ 3. Section 852.273–71 is revised to read as follows:

852.273–71 Alternative Negotiation Techniques.

As prescribed in 873.110(b), insert the following provision:

Alternative Negotiation Techniques (Nov 2021)

The Contracting Officer may elect to use the alternative negotiation techniques described in 873.111(d) in conducting this procurement. If used, Offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

■ 4. Section 852.273–72 is revised to read as follows:

852.273–72 Alternative Evaluation.

As prescribed in 873.110(c), insert the following provision:

Alternative Evaluation (Nov 2021)

(a) The Government will award a contract resulting from this solicitation to the responsible Offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by [*Contracting Officer insert description of how the information may be viewed electronically or otherwise*]. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible Offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

■ 5. Section 852.273–73 is revised to read as follows:

852.273–73 Evaluation—Health-Care Resources.

As prescribed in 873.110(d), in lieu of FAR provision 52.212–2, the Contracting Officer may insert a provision substantially as follows:

Evaluation—Health–Care Resources (Nov 2021)

(a) The Government will award a contract resulting from this solicitation to the responsible Offeror whose proposal, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers: [*Contracting Officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the Contracting Officer deems necessary to evaluate offers. Price must be evaluated in every acquisition. The Contracting Officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.*]

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s). The Government may reject any or all proposals if such action is in the Government's interest. Additionally, the Government may waive informalities and minor irregularities in proposals received.

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of a proposal, mailed or otherwise furnished to the successful Offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received by the Contracting Officer before award.

(End of provision)

■ 6. Section 852.273–74 is revised to read as follows:

852.273–74 Award Without Exchanges.

As prescribed in 873.110(e), insert the following provision:

Award Without Exchanges (Nov 2021)

The Government intends to evaluate proposals and award a contract without exchanges with Offerors. Therefore, each initial proposal should contain the Offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the Contracting Officer to be necessary.

■ 7. Part 873 is revised to read as follows:

PART 873—SIMPLIFIED PROCEDURES FOR HEALTH–CARE RESOURCES

Sec.
873.101 Policy.
873.102 Definitions.
873.103 Priority sources.
873.104 Competition requirements.
873.105 Acquisition planning.
873.106 Exchanges with industry before receipt of proposals.
873.107 Socioeconomic programs.
873.108 Publicizing contract actions.
873.109 General requirements for acquisition of health-care resources.
873.110 Solicitation provisions.
873.111 Acquisition strategies for health-care resources.
873.112 Evaluation information.
873.113 Exchanges with offerors.
873.114 Best value pool.
873.115 Proposal revisions.
873.116 Source selection decision.
873.117 Award to successful offeror.
873.118 Debriefings.

Authority: 38 U.S.C. 8127–8128; 38 U.S.C. 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

873.101 Policy.

(a) *General.* In accordance with 38 U.S.C. 8153, to secure health-care resources which otherwise might not be feasibly available, or to effectively utilize certain other health-care resources, the Department of Veterans Affairs (VA) may make arrangements by contract for the mutual use, or exchange of use, of health-care resources between VA health-care facilities and any health-care provider, or other entity or individual. This part prescribes simplified procedures for contracts with entities not affiliated with VA under 38 U.S.C. 7302 to secure health-care resources that are a commercial service, or the use of medical equipment or space. VA may enter into such a contract if such resources are not, or would not be, used to their maximum effective capacity. (38 U.S.C. 8153)

(b) *Precedence.* The procedures in this part shall be used in conjunction with the Federal Acquisition Regulation (FAR) and other parts of the VA Acquisition Regulation (VAAR). However, when a policy or procedure in the FAR or another part of the VAAR is inconsistent with the procedures contained in this part, this part shall take precedence. (38 U.S.C. 8153)

873.102 Definitions.

Commercial service means a service that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts. (38 U.S.C. 8153)

Health-care providers include health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources. (38 U.S.C. 8153)

Health-care resource includes hospital care and medical services (as those terms are defined in 38 U.S.C. 1701 and services under 38 U.S.C. 1782 and 1783) any other health-care service, and any health-care support or administrative resource. (38 U.S.C. 8153))

873.103 Priority sources.

Except for the acquisition of covered services available from the Committee for Purchase From People Who Are Blind or Severely Disabled and the AbilityOne Program (see FAR subpart 8.7), there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space in accordance with 808.002(a)(2) and 873.107. (38 U.S.C. 8153)

873.104 Competition requirements.

(a) *Affiliated institutions.* (1) A health-care resource may be acquired on a sole source basis if a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the VA in accordance with 38 U.S.C. 7302, including medical practice groups and other entities associated with affiliated institutions, blood banks, organ banks, or research centers. (38 U.S.C. 8153(a)(3)(A))

(2) Acquisitions of health-care resources identified in paragraph (a)(1) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101.

(b) *Non-affiliated entities.* (1) If the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a)(1) of this section, contracting officers shall permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation for the resource to be procured, and provide for the consideration by VA of bids, proposals, or quotations so submitted. (38 U.S.C. 8153(a)(3)(B))

(2) Acquisition of health-care resources identified in paragraph (b)(1) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (b)(1) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in FAR 6.303. (38 U.S.C. 8153(a)(3)(D))

873.105 Acquisition planning.

(a) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include fiscal, legal, administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher-level designee. At a minimum, the team must include the contracting officer and a representative of the Office of General Counsel and the requesting service. (38 U.S.C. 8153)

(b) The contracting officer or the acquisition team, as appropriate, must conduct market research, including satisfying the requirements of 808.002(a)(2) and 873.107, Socioeconomic programs, and a VA Rule of Two determination (819.502–2). It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.107. (38 U.S.C. 8153)

(c) In lieu of the requirements of FAR part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes—summarizing decisions, actions, and conclusions—shall be prepared and included in the contract file, along with a copy of the briefing materials. (38 U.S.C. 8153)

873.106 Exchanges with industry before receipt of proposals.

(a) Exchange of information among all interested parties involved in an acquisition described in 873.104(b), from the earliest identification of a requirement through release of the solicitation, is encouraged. Any exchange of information must be consistent with procurement integrity requirements in FAR 3.104. The nature and extent of exchanges between the

Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer. (38 U.S.C. 8153)

(b) Techniques to promote early exchange of information include—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the provisions therein would provide relevant information;

(4) One-on-one meetings with potential offerors;

(5) Presolicitation notices;

(6) Draft requests for proposals (RFPs);

(7) Requests for information (RFIs);

(8) Presolicitation or preproposal conferences;

(9) Site visits;

(10) Electronic notices (*e.g.,* internet);

(11) Use of the System for Award Management (SAM) (*see http://www.sam.gov/*); and

(12) Researching VA's Vendor Information Pages (VIP) database at *https://www.vip.vetbiz.va.gov/.*

873.107 Socioeconomic programs.

(a) The Veterans First Contracting Program in VAAR subpart 819.70 takes precedence over other small business programs. (38 U.S.C. 8127–8128)

(b)(1) Except for contract actions subject to 808.002(a)(2), competitive contract actions not otherwise excluded under this part shall be set-aside for VIP-listed service-disabled veteran-owned small business (SDVOSB) concerns or veteran-owned small business (VOSB) concerns if the contracting officer has a reasonable expectation that two or more eligible small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127–8128)

(2) The contracting officer shall proceed with the acquisition under the simplified procedures of this part considering priority sources (see 808.008(a)(2) and 873.103) and preferences for other small businesses in accordance with 819.203–70 and 819.7004. (38 U.S.C. 8153)

(c) Without regard to FAR 13.003(b)(1), 19.203, 19.502, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(d) The contracting officer shall ensure priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences, established by 38 U.S.C. 8127 and 8128, as implemented in VAAR subpart 819.70, the Veterans First Contracting Program. Specifically, the contracting officer shall consider preferences for verified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for verified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small business concerns in accordance with FAR 19.203, 819.203–70, and 819.7004. (38 U.S.C. 8153)

873.108 Publicizing contract actions.

(a) All competitive acquisitions under this part, except as provided in paragraph (b) of this section, for dollar amounts in excess of the SAT, shall be publicly announced utilizing a medium designed to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Notice shall be published for a reasonable time prior to issuance of a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the request for quotation (RFQ) or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government. (38 U.S.C. 8153)

(b) The requirement for public announcement does not apply to sole source acquisitions described in 873.104(a). However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from an institution not affiliated with the VA in accordance with 38 U.S.C. 7302, if conducted on a sole source basis, must still be justified and publicized (see 873.104(b)(2)). (38 U.S.C. 8153)

(c) For acquisitions below the SAT, a public announcement is optional. (38 U.S.C. 8153)

(d) Each solicitation issued under the procedures in this part must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and this part. (38 U.S.C. 8153)

873.109 General requirements for acquisition of health-care resources.

(a) *Source selection authority.* Unless the head of the contracting activity (HCA) appoints another individual to serve as the Source Selection Authority (SSA), the contracting officer shall be the SSA for acquisitions of health-care resources, consisting of commercial services, or the use of medical equipment or space, utilizing the guidance contained in this part. (38 U.S.C. 8153)

(b) *Performance work statement/statement of work.* The performance work statement (PWS) or statement of work (SOW) must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition. (38 U.S.C. 8153)

(c) *Documentation.* Without regard to FAR 13.106–3(b), 13.501(b), or 15.406–3, the contract file must include—

(1) A brief written description of the procedures used in awarding the contract;

(2) A written determination that the health-care resources being procured are not otherwise feasibly available or that utilization of such health-care resources is necessary to meet mission requirements;

(3) Documentation of market research and the results of such research;

(4) The number of offers received; and

(5) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision. (38 U.S.C. 8153)

(d) *Time for receipt of quotations or offers.* (1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in the solicitations.

(2) Without regard to FAR 15.208 or 52.212–1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the

contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(d)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs). (38 U.S.C. 8153)

(e) *Cancellation of procurements.* Any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government and a memorandum for the record in included in the solicitation file explaining the reasons for the cancellation. (38 U.S.C. 8153)

873.110 Solicitation provisions.

(a) As required in 873.109(d), contracting officers shall set a reasonable time for receipt of quotations or proposals and shall insert the provision at 852.273–70, Late Offers, in all RFQs and RFPs exceeding the micro-purchase threshold. However, this provision shall not be used if the provision 852.273–71, Alternative Negotiation Techniques, is to be used. (38 U.S.C. 8153)

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273–71, Alternative Negotiation Techniques, when either of the alternative negotiation techniques described in 873.111(d)(1) will be used. (38 U.S.C. 8153)

(c) The contracting officer shall insert the provision at 852.273–72, Alternative Evaluation, in lieu of FAR provision 52.212–2, Evaluation—Commercial Items, when the alternative negotiation technique described in 873.111(d)(1)(ii) will be used. (38 U.S.C. 8153)

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under a RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273–73, Evaluation—Health-Care Resources, in the RFQ or RFP in lieu of FAR provision 52.212–2. (38 U.S.C. 8153)

(e) As provided at 873.113(f), if award may be made without exchange with offerors, the contracting officer shall include the provision at 852.273–74, Award Without Exchanges, in the RFQ or RFP. (38 U.S.C. 8153)

(f) The contracting officer shall insert the FAR clause at 52.207–3, Right of First Refusal of Employment, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151–8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees. (38 U.S.C. 8153)

873.111 Acquisition strategies for health-care resources.

The following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions. (38 U.S.C. 8153)

(a) *Request for quotations (RFQ).* (1) Without regard to FAR subparts 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (*e.g.,* past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made. (*see* FAR 13.004)

(2) For acquisitions in excess of the SAT, the procedures set forth in FAR part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein. (38 U.S.C. 8153)

(b) *Sealed bidding.* FAR part 14 provides procedures for sealed bidding.

(c) *Multiphase acquisition technique*—(1) *General.* Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror. (38 U.S.C. 8153)

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph. (38 U.S.C. 8153)

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (*e.g.,* proposed technical concept, past performance information, limited pricing information). (38 U.S.C. 8153)

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision. (38 U.S.C. 8153)

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision. (38 U.S.C. 8153)

(6) *Debriefing.* Without regard to FAR 15.505, contracting officers must debrief offerors whose proposals are not accepted under a competitive request for proposals (RFP) as required by 873.118. (38 U.S.C. 8153)

(d) *Alternative negotiation techniques.* (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (*see* FAR 3.104). (38 U.S.C. 8153)

873.112 Evaluation information.

(a) Without regard to FAR 15.304, Evaluation factors and significant subfactors (except for 15.304(c)(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition. (38 U.S.C. 8153)

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate. (38 U.S.C. 8153)

(d) The relative importance of any evaluation information included in a solicitation must be set forth therein. (38 U.S.C. 8153)

873.113 Exchanges with offerors.

(a) Without regard to FAR 15.201 or 15.306, acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions are not applicable to acquisitions under this part. (38 U.S.C. 8153)

(b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal. (38 U.S.C. 8153)

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (*e.g.,* perceived errors, omissions, or deficiencies) in an Offeror's proposal. (38 U.S.C. 8153)

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors. (38 U.S.C. 8153)

(e) Except for acquisitions based on alternative negotiation techniques contained in 873.111(d)(1), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR parts 3 and 24. (38 U.S.C. 8153)

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary. (38 U.S.C. 8153)

873.114 Best value pool.

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations are not applicable to acquisitions under this part 873. (38 U.S.C. 8153)

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror. (38 U.S.C. 8153)

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time. (38 U.S.C. 8153)

873.115 Proposal revisions.

(a) The contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers n. In any case, contracting officers and acquisition team members must safeguard all proposals and revisions to avoid unfair dissemination of an offeror's proposal. (38 U.S.C. 8153)

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions. (38 U.S.C. 8153)

(c) Requesting and/or receiving proposal revisions does not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions. (38 U.S.C. 8153)

873.116 Source selection decision.

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The SSA shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The SSA may determine that all proposals should be rejected if it is in the best interest of the Government. (38 U.S.C. 8153)

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the SSA requests such assistance. (38 U.S.C. 8153)

(c) The source selection decision must be documented in accordance with FAR 15.308. (38 U.S.C. 8153)

873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror. (38 U.S.C. 8153)

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract. (38 U.S.C. 8153)

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award. (38 U.S.C. 8153)

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period. (38 U.S.C. 8153)

873.118 Debriefings.

Offerors whose proposals are not accepted under a competitive request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506. (38 U.S.C. 8153)

[FR Doc. 2021–20922 Filed 9–29–21; 8:45 am]

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Proposed Rules

Federal Register
Vol. 86, No. 187
Thursday, September 30, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0834; Project Identifier MCAI–2021–00298–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.a. Model A109S and AW109SP helicopters. This proposed AD was prompted by the discovery that rubber protection of certain electrical wiring had not been installed in the baggage avionics bay during production. This proposed AD would require installing protective rubber borders on the edge of the baggage avionics bay frames, 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 November 15, 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; telephone +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*. For Leonardo Helicopters service information identified in this NPRM, 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://customerportal.leonardocompany.com/en-US/*. 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. The EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0834.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0834; 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: Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0834; Project Identifier MCAI–2021–00298–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov*. Any commentary that the FAA receives that 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 2021–0065, dated March 8, 2021 (EASA AD 2021–0065), to correct an unsafe condition for certain serial-numbered Leonardo S.p.A. Helicopters, formerly Finmeccanica S.p.A., AgustaWestland S.p.A., Agusta S.p.A., Model A109S and AW109SP helicopters.

This proposed AD was prompted by the discovery that rubber protection of

certain electrical wiring had not been installed in the baggage avionics bay during production. The FAA is proposing this AD to prevent chafing of electrical wiring, which could result in fire ignition and smoke in the baggage compartment and subsequent loss of control of the helicopter. See EASA AD 2021–0065 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0065 requires installing rubber protections on the electrical wiring in the baggage/avionics compartment.

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.

Other Related Service Information

The FAA reviewed Leonardo Helicopters Alert Service Bulletin (ASB) No. 109S–100, dated February 2, 2021, for Model A109S helicopters, and Leonardo Helicopters ASB No. 109SP–142, also dated February 2, 2021, for Model AW109SP helicopters. This service information specifies procedures for installing protective rubber borders on the edge of the baggage avionics bay frames.

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 2021–0065, 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 2021–0065 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0065 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 2021–0065 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 2021–0065. Service information referenced in EASA AD 2021–0065 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0834 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 3 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.

Installing protective rubber borders on the edge of the baggage avionics bay frames would take about 2 work-hours and parts would cost about $24 for an estimated cost of $194 per helicopter and $582 for the U.S. fleet.

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–2021–0834; Project Identifier MCAI–2021–00298–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 15, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model A109S and AW109SP helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0065, dated March 8, 2021 (EASA AD 2021–0065).

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2497, Electrical Power System Wiring.

(e) Unsafe Condition

This AD was prompted by the discovery that rubber protection of certain electrical wiring had not been installed in the baggage avionics bay during production. The FAA is issuing this AD to prevent chafing of electrical wiring. The unsafe condition, if not addressed, could result in fire ignition and smoke in the baggage compartment and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0065.

(h) Exceptions to EASA AD 2021–0065

(1) Where EASA AD 2021–0065 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0065 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0065.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0065 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits are prohibited.

(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 2021–0065, 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 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–2021–0834.

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

Issued on September 23, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–21102 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0838; Project Identifier AD–2020–01590–A]

RIN 2120–AA64

Airworthiness Directives; Honda Aircraft Company, LLC 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 Honda Aircraft Company, LLC (Honda) Model HA–420 airplanes. This proposed AD was prompted by a report of in-flight smoke and fire that initiated from the windshield heat power wire braid. This proposed AD would require incorporating temporary revisions into the airplane flight manual (AFM) and the quick reference handbook (QRH) that modify procedures for windshield heat operation until the affected windshield assemblies are replaced. The FAA proposes this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 15, 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 proposed rule, contact Honda Aircraft Company, LLC, 6430 Ballinger Road, Greensboro, NC 27410; phone: (336) 662–0246; website: *https://www.hondajet.com.* 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–2021–0838; 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: Bryan Long, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5578; fax: (404) 474–5606; email: *bryan.long@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–2021–0838; Project Identifier AD–2020–01590–A'' 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 Bryan Long, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report of inflight smoke and fire that initiated from the windshield heat power wire braid on a Honda Model HA–420 airplane. An investigation identified that certain Honda Model HA–420 airplanes could have a severed windshield heat power wire braid from installation of the windshield heat wiring during manufacture. The severed windshield heat power wire braid could cause arcing that ignites the wire sheathing and sealant and the windshield acrylic. This condition, if not addressed, could lead to cockpit smoke and 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 the following temporary revisions.

- Honda Aircraft Company Temporary Revision TR 04A–1, dated March 4, 2020, for Airplane Flight Manual HJI–29001–003–001 Rev C.
- HondaJet Temporary Revision TR 04A–1, dated March 4, 2020, for Quick Reference Handbook HJ1–29000–007–001 Rev C.
- Honda Aircraft Company Temporary Revision TR 04A–1, dated March 4, 2020, for Airplane Flight Manual HJ1–29001–003–001 Rev E.
- HondaJet Temporary Revision TR 04A–1, dated March 4, 2020, for Quick Reference Handbook Normal Procedures Rev E, HJ1–29001–007–001.

These temporary revisions provide modified procedures for windshield heat operation to reduce exposure to potential windshield heat for the applicable serial numbers specified on the documents.

The FAA also reviewed Honda Service Bulletin SB–420–56–002, Revision B, dated April 19, 2021 (Honda SB–420–002B). The service bulletin specifies identifying and replacing affected windshield assemblies. The service bulletin also specifies removing the temporary revisions to the AFM, QRH, and electronic checklist (ECL) after the affected windshield assemblies have been replaced.

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

Proposed AD Requirements in This NPRM

This proposed AD would require incorporating the temporary revisions to the AFM and QRH that modify procedures for windshield heat operations until the affected windshield assemblies are replaced. This proposal would allow the owner/operator (pilot) to revise the AFM and QRH. These revisions are not considered maintenance actions and may be done by a pilot holding at least a private pilot certificate. These actions must be recorded in the aircraft maintenance records to show compliance with this AD.

Differences Between This AD and the Service Information

Honda issued temporary revisions to the AFM, QRH, and ECL prior to issuing Honda SB–420–002B, which specifies replacement of the windshield assemblies. Honda SB–420–002B does not specify incorporating the temporary revisions to the AFM, QRH, and ECL but addresses removal if the temporary revisions were incorporated. The proposed AD would not require incorporating or removing the temporary revisions to the ECL because the ECL is not part of the approved type design of the airplane. All pertinent requirements would be addressed through the AFM.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 156 airplanes of U.S. registry. There are 475 affected windshield assemblies worldwide, and the FAA has no way of knowing the number of affected windshield assemblies installed on U.S. airplanes. The estimated cost on U.S. operators reflects the maximum possible cost based on the 156 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
Insert revised procedures in the AFM and QRH.	1 work-hour × $85 per hour = $85	Not applicable	$85	$13,260
* Windshield assembly replacement (both left and right assemblies).	154 work-hours × $85 per hour = $13,090	$153,286	166,376	25,954,656
Remove revised procedures from the AFM and QRH.	1 work-hour × $85 per hour = $85	Not applicable	85	13,260

* On most airplanes, both the left and right windshield assemblies have a serial number affected by the unsafe condition, and the above costs represents replacement of both the left and right windshield assemblies. However, some airplanes may only have one affected windshield assembly and not require replacement of both.

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 proposing 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:

Honda Aircraft Company LLC: Docket No. FAA–2021–0838; Project Identifier AD–2020–01590–A.

(a) Comments Due Date

The FAA must receive comments by November 15, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Honda Aircraft Company LLC Model HA–420 airplanes, serial numbers 42000011 through 42000179, 42000182, and 42000187, certificated in any category, with a windshield assembly installed that has a part number and serial number listed in table 5 of the Accomplishment Instructions in Honda Aircraft Company Alert Service Bulletin No. SB–420–56–002, Revision B, dated April 19, 2021 (Honda SB–420–56–002, Revision B).

(d) Subject

Joint Aircraft System Component (JASC) Code 3040, Windshield/Door Rain/Ice Removal.

(e) Unsafe Condition

This AD was prompted by a report of in-flight smoke and fire that initiated from the windshield heat power wire braid. The FAA is issuing this AD to prevent arcing of the windshield heat power wire braid, which could ignite the wire sheathing and sealant and the windshield acrylic. This condition, if not addressed, could lead to cockpit smoke and fire.

(f) Compliance

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

(g) Temporary Revisions to the Airplane Flight Manuals (AFMs) and Quick Reference Handbooks (QRHs)

(1) Within 15 days after the effective date of this AD, revise the existing AFM and QRH for your airplane by inserting the pages identified in the applicable temporary revisions listed in paragraphs (g)(1)(i) through (iv) of this AD.

(i) Honda Aircraft Company Temporary Revision TR 04A–1, dated March 4, 2020, for Airplane Flight Manual HJI–29001–003–001 Rev C.

(ii) HondaJet Temporary Revision TR 04A–1, dated March 4, 2020, for Quick Reference Handbook HJ1–29000–007–001 Rev C.

(iii) Honda Aircraft Company Temporary Revision TR 04A–1, dated March 4, 2020, for Airplane Flight Manual HJ1–29001–003–001 Rev E.

(iv) HondaJet Temporary Revision TR 04A–1, dated March 4, 2020, for Quick Reference Handbook Normal Procedures Rev E, HJ1–29001–007–001.

(2) The actions required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4), and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Windshield Assembly Replacement

Within 24 months after the effective date of this AD, for each windshield assembly with a part number and serial number listed in table 5 of the Accomplishment Instructions in Honda SB–420–56–002, Revision B, replace the windshield assembly in accordance with step (2) or (3) of the Accomplishment Instructions in Honda SB–420–56–002, Revision B.

(i) Removal of Revisions to the AFMs and QRHs

Before further flight after replacing the windshield assemblies required by paragraph (h) of this AD, remove the AFM and QRH pages that were required by paragraph (g) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) For service information that contains steps that are labeled as ''Required for Compliance'' (RC), the following provisions 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. 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.

(k) Related Information

(1) For more information about this AD, contact Bryan Long, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5578; fax: (404) 474–5606; email: *bryan.long@faa.gov.*

(2) For service information identified in this AD, contact Honda Aircraft Company LLC, 6430 Ballinger Road, Greensboro, NC 27410; phone: (336) 662–0246; website: *https://www.hondajet.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 September 23, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–21104 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1120; Project Identifier 2019–SW–056–AD]

RIN 2120–AA64

Airworthiness Directives; Goodrich Externally-Mounted Hoist Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) for various model helicopters with certain part-numbered Goodrich externally-mounted hoist assemblies (hoists) installed. This action revises the NPRM by adding a figure and revising certain requirements. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since some of these actions would impose an additional burden over those in the NPRM, the agency is requesting comments on this SNPRM.

DATES: The FAA must receive comments on this SNPRM by November 1, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Goodrich service information identified in this SNPRM, contact Collins Aerospace; 2727 E Imperial Hwy., Brea, CA 92821; telephone (714) 984–1461. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1120; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this SNPRM, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

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

SUPPLEMENTARY INFORMATION:

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–2020–1120; Project Identifier 2019–SW–056–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 again revise 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 proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this SNPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this SNPRM. Submissions containing CBI should be sent to Kristi Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued an NPRM that proposed to amend 14 CFR part 39 by adding an AD that would apply to various model helicopters with certain part-numbered externally-mounted Goodrich hoists installed. The NPRM published in the **Federal Register** on December 11, 2020 (85, FR 79930). In the NPRM, the FAA proposed to require replacing unmodified hoists, installing placards, revising the existing Rotorcraft Flight Manual (RFM) for your helicopter, deactivating or removing a hoist if a partial peel out occurs, reviewing the helicopter's hoist slip load test records, repetitively inspecting the hoist cable and overload clutch (clutch), and reporting information to the FAA.

The NPRM was prompted by a series of EASA ADs, the most recent being EASA AD 2015–0226R5, Revision 5, dated July 23, 2020 (EASA AD 2015–0226R5), to correct an unsafe condition for various model helicopters with a Goodrich externally-mounted hoist with one of the following part numbers (P/Ns) or base P/Ns installed: 42315, 42325, 44301–10–1, 44301–10–2, 44301–10–4, 44301–10–5, 44301–10–6, 44301–10–7, 44301–10–8, 44301–10–9, 44301–10–10, 44301–10–11, 44311, 44312, 44314, 44315, 44316, or 44318. EASA advises of an initial incident of a rescue hoist containing a dummy test load of 552 lbs. that reeled-out without command of the operator and impacted the ground during a maintenance check flight, because the overload clutch had failed. EASA states that this condition, if not detected and corrected, could lead to further cases of in-flight loss of the hoist load, possibly resulting in injury to persons on the ground or in a hoisting accident.

Accordingly, EASA AD 2015–0226R5 requires a records review to determine if the cable has exceeded the allowable limit in previous load testing, a repetitive load check and test of the clutch slip value, removal or deactivation of a hoist that cannot be tested due to lack of approved instructions, replacement of the old clutch P/N with a new clutch developed by Goodrich to mitigate some of the

factors resulting in clutch degradation, periodic replacement of the hoist, reduction of the maximum allowable load on the hoist, addition of operational limitations to the RFM, and replacement of the hoist after a partial peel out. EASA AD 2015–0226R5 also prohibits the installation of a replacement cable that has exceeded the allowable limit in previous load testing. EASA considers AD 2015–0226R5 to be interim action and advises further AD action may follow.

Comments

The FAA received comments from three commenters. The commenters were EASA, Collins Aerospace, and an individual. The following discussion presents the comments received on the NPRM and the FAA's response.

Request To Clarify Interval Between Overhaul

EASA requested the FAA clarify why the proposed AD does not include the reduced time interval between overhaul that is required by EASA's AD. EASA stated that based on the occurrences and design review, its AD limits the time between overhaul to 24 months, 1,200 cycles, or 1,600 lifts, which can be extended to 40 months or 2,600 lifts if tests and documentation are provided to EASA.

The FAA's proposed AD and EASA's AD differ in that the EASA AD requires repetitive replacement or overhaul of all affected hoists, while the FAA's proposed AD would require a one-time replacement of affected hoists that have not been modified with a new overload clutch assembly (and re-identified with a ''4'' as the first digit of the serial number (S/N)). Since the proposed AD would also prohibit installation of a hoist unless it has a ''4'' as the first digit of the S/N, this would have the effect of requiring replacement of a non-modified hoist with a modified hoist. The FAA acquired data from Collins Aerospace that showed over 1,000 field load checks of hoists with a new overload clutch assembly with no reports of low pulling clutches or peel out events. The FAA evaluated this data and determined that it does not substantiate a 24-month repetitive replacement or overhaul of hoists that have been modified with the new overload clutch assembly. The FAA considers this AD action to be an interim action, and using the additional data reported following issuance of this AD, will re-evaluate this determination if needed.

Request Regarding Replacement of the Hoist

One commenter requested the FAA allow installing a new clutch assembly instead of requiring ''scrapping'' the entire hoist, if the hoist does not have the number ''4'' as the first digit of its S/N.

The FAA agrees. The requirement proposed by this AD to replace a hoist without the number ''4'' as the first digit of its S/N with a modified hoist would not require removing the hoist from service. The proposed requirement states to ''replace'' the hoist. This would not prohibit re-installing a hoist after modifying it to install a new overload clutch assembly and (re)-identifying it with a ''4'' as the first digit of the S/N. No changes to this proposed AD are necessary as a result of this comment.

Safety Concern Addressed by Existing AD

One commenter stated that this clutch safety concern has already been addressed by AD 2013–06–51 (78 FR 38826, June 28, 2013) (AD 2013–06–51), Goodrich Alert Service Bulletin (ASB) No. 44301–10–15, dated March 8, 2013 (ASB 44301–10–15), and Goodrich ASB No. 44301–10–18, Revision 6, dated October 10, 2016 (ASB 44301–10–18).

The FAA agrees that ASB 44301–10–18 specifies procedures to address this issue. However, while an operator may incorporate the procedures in this service bulletin into its inspection program, not all operators are required to do so. In order for these procedures to become mandatory, and to correct the unsafe condition identified in the NPRM, the FAA must issue an AD. Further, AD 2013–06–51 (and ASB 44301–10–15, which is mandated by AD 2013–06–51) requires a one-time cable conditioning lift and load inspection test as interim corrective action. AD 2013–06–51 does not require all of the same actions as this proposed AD.

Requests Regarding Compliance Time for Hoist Replacement

The individual commenter requested that the FAA change part of the compliance time for replacing a hoist without the number ''4'' as the first digit of its S/N from 55 operating hours to 55 hours since the last clutch overhaul. The commenter's hoist has 89 operating hours and was overhauled 2 hours ago; the commenter's understanding is that such a hoist would need to be replaced immediately when the proposed AD becomes effective.

The FAA disagrees. If the commenter's hoist has an S/N without the number ''4'' as the first digit, then at its recent overhaul it was not modified with a new overload clutch assembly. Thus, it is still subject to the unsafe condition. Operators in this situation may, under the provisions of paragraph (h) of this SNPRM, request approval of an alternative method of compliance (AMOC) if sufficient data is submitted to substantiate an acceptable level of safety.

Collins Aerospace stated that the compliance time for converting a hoist to a hoist with a new overload clutch assembly should be 24 months, based on improved risk analysis information from initial load checks and subsequent load checks.

The FAA partially agrees. The FAA also determined that 24 months is an adequate compliance time to mitigate the risk to reasonable levels. However, the FAA proposed a 12-month compliance time after factoring an estimated 12-month processing time before issuance of the final rule of this AD. The FAA did not make any changes to the SNPRM as a result of these comments.

Requests Regarding the Operating Limitations

EASA requested the FAA explain why it did not adopt two of the operating limitations required by EASA AD 2015–0226R5: The limit on the number of persons that can be hoisted, and the warning that exceeding 15° of lateral pendulum angle/helicopter vertical axis may lead to clutch slippage.

EASA AD 2015–0226R5 limits the number of persons that can be hoisted to two, except when hoisting more persons (such as children) will not exceed the weight limit. The FAA determined that the maximum hoist load limitations described in terms of weight alone, without the extraneous information on the number of persons lifted, are sufficient. The FAA did not propose to include the lateral pendulum angle of the hoist cable with respect to the helicopter's vertical axis after determining that such a limitation would not be measurable or enforceable. The FAA did not make any changes to the SNPRM as a result of this comment.

EASA requested the FAA explain why the proposed AD would require different temperature ranges for the weight limitations than EASA AD 2015–0226R5 and would omit limitations for OAT below −20 °C.

The FAA agrees that the maximum hoist load limitations in this proposed AD should be consistent with those in the EASA AD and that this proposed AD should include requirements for all temperatures. Accordingly, the FAA has changed the temperatures in the

maximum hoist load limitations in this SNPRM.

Collins Aerospace requested the FAA change the proposed maximum hoist load limitations to distinguishing between non-modified hoists (without the number ''4'' as the first digit of its S/N) and modified hoists with a new clutch (with the number ''4'' as the first digit of its S/N). Collins Aerospace stated that after EASA AD 2015–0226R1 was issued, Goodrich performed a series of characterization tests that demonstrated the performance envelope of the modified hoist in various conditions. According to Collins Aerospace, the results of these tests as documented in Goodrich Report No. 49000–1087, Revision A, dated July 31, 2017, indicate that margins are maintained with a less restrictive temperature limitation than those imposed on non-modified hoists.

The FAA disagrees with requiring different maximum hoist load limitations for non-modified hoists and modified hoists. After reviewing the data in the report referenced by the commenter, the FAA determined it does not demonstrate with an acceptable level of confidence that less restrictive temperature limitations are appropriate for modified hoists.

Request To Allow Additional Load Check Tool

Collins Aerospace requested the FAA change the proposed requirement to use load check tool P/N 49900–889–104 for the cable conditioning and a hoist slip load test to also allow using tool P/N 49900–889–103. Collins Aerospace stated that both are tool kits, with P/N 49900–889–104 having all of the components of P/N 49900–889–103, plus extra components so that P/N 49900–889–104 can be used to perform tests on helicopters with older versions of the large hook damper. Collins Aerospace further stated that helicopters with newer model dampers and all other platforms can utilize tool P/N 49900–889–103, which is expected to supersede tool P/N 49900–889–104 as the older dampers are removed from service.

The FAA agrees and has revised this SNPRM accordingly.

Request Regarding Hoist Load Check (Test) After Installation

EASA requested the FAA explain why the proposed AD does not require accomplishing a hoist load check (test) after installing a new clutch, as required by the EASA AD. EASA stated the test will check for any uncertainties that might develop during handling and storage before installation.

The FAA is not aware of any modified hoists with a new clutch (having a number ''4'' as the first digit of the S/N) failing the hoist load test. Accordingly, the FAA determined there is insufficient data to support proposing this as an additional requirement.

Request Regarding Compliance Time for Initial Load Test

Collins Aerospace requested that, for certain hoists, the FAA extend the compliance time for the initial hoist slip load test from 30 days to six months. In support of this request, Collins Aerospace stated the 30 day compliance time calculation is appropriate for non-modified hoists that have: No improvements from manufacture, repair, or overhaul after February 1, 2018; not complied with ASB 44301–10–18 or ASB 44301–10–15; or not had a load check performed. Collins Aerospace further stated that enough load check tools may not be available to test all hoists that would be affected by the proposed AD.

The FAA disagrees with changing the proposed AD to account for manufacturing improvements because not enough data has been provided to substantiate the commenter's request. However, the FAA agrees with providing an allowance for the initial instance of the cable inspections and hoist slip load test proposed by this AD if those actions have been accomplished within the last six months. The FAA has changed the proposed compliance time accordingly.

Request Regarding the Costs of Compliance

Collins Aerospace stated that replacing a hoist is not necessary as the clutch can be replaced instead for an average cost of $24,000, plus 8 hours of labor. Collins Aerospace also stated that the cost for the field load check tool is $11,171.

The FAA agrees that replacing a hoist without the number ''4'' as the first digit of its S/N, as required by paragraph (g)(1) of this SNPRM, may be accomplished by modifying the hoist with the new overload clutch assembly and re-identifying it with a ''4'' as the first digit of the S/N. The FAA has updated the Costs of Compliance section accordingly.

Comment Regarding Figure 4

Collins Aerospace stated that although a figure 4 is referenced in the Required Actions of the NPRM, no figure 4 appears in the NPRM.

The FAA agrees. Figure 4 to paragraph (e)(2)(iv) of the NPRM (now Figure 4 to paragraph (g)(2)(iv) of this SNPRM), which is necessary to accomplish the required actions, was inadvertently omitted in reproduction when the NPRM published in the **Federal Register**.

Other Differences Between the NPRM and the SNPRM

In this SNPRM, the FAA has added ''total'' to the compliance time and usage thresholds for hoists without a ''4'' as the first digit of its S/N to clarify that it is the total accumulation of time on the hoist that would trigger the proposed requirement to replace the hoist. In this SNPRM, the FAA has also added the metric conversion (kg) for the hoist ratings in the first two figures.

Lastly, this SNPRM uses an updated format. As a result, paragraph identifiers have changed.

FAA's Determination

Affected helicopters include helicopters that have been approved by the aviation authorities of Canada, Italy, France, and Germany 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 issuing this SNPRM after determining the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design. Certain changes described above expand the scope of the NPRM. As a result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Related Service Information Under 1 CFR part 51

The FAA reviewed ASB 44301–10–18, which specifies maximum hoist load limitations with respect to ambient temperature and describes actions and conditions that could reduce the capacity of the clutch. This service information also specifies procedures for inspecting the cable and inspecting the clutch by performing a cable conditioning lift and a hoist slip load test.

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

Proposed AD Requirements in This SNPRM

This proposed AD would require:

- Replacing any hoist without a ''4'' as the first digit of its S/N within 12 months after the effective date of this AD or before the hoist accumulates 55

total operating hours, 1,200 total hoist cycles (cycles), or 1,600 total hoist lifts (lifts), whichever occurs first.

- Installing placards and revising the existing RFM for your helicopter to add maximum hoist load limitations, an excessive maneuvering warning, a maximum sustained bank angle in turn, and a prohibition on operating the hoist in the event of a partial peel out.
- Deactivating or removing any hoist that experiences a partial peel out from service.
- Reviewing records for cable load-testing that was previously performed, and depending on the findings, replacing the cable.
- Repetitively inspecting the cable, inspecting the clutch by performing a cable conditioning lift and hoist slip load test, inspecting the cable a second time, reporting certain information to the FAA, and depending on these inspection outcomes, replacing the cable or removing the hoist from service.

This proposed AD would also prohibit installing an affected replacement or original installation hoist that has not been re-identified to indicate it has an improved clutch assembly.

Installation of a hoist with an improved overload clutch assembly, which is indicated by having a ''4'' as the first digit of its S/N, would not terminate the actions required by this proposed AD.

Differences Between This SNPRM and the EASA AD

EASA AD 2015–0226R5 requires repetitively replacing the hoist with a modified hoist, whereas this proposed AD would require a one-time replacement of the hoist with a modified hoist that has the improved clutch assembly installed. EASA AD 2015–0226R5 requires adding a placard or operational limitation to the RFM warning that exceeding 15° of lateral pendulum angle/helicopter vertical axis can lead to clutch slippage, and this proposed AD would not. EASA AD 2015–0226R5 requires adding an operating limitation to the RFM limiting the number of persons who can be hoisted, whereas this proposed AD would not. This proposed AD would require replacing the cable before the next hoist operation if a cable has previously been load-tested at more than 1,500 lbs or at an unknown weight during at least one cable pull, while EASA AD 2015–0226R5 requires this replacement during multiple cable pulls. This proposed AD would require visually inspecting and measuring the diameter of the cable before and after performing a cable conditioning and a hoist slip load test, whereas EASA AD 2015–0226R5 does not. This proposed AD would require performing the cable conditioning and hoist slip load test within 30 days after the effective date of this AD, unless already done within the last 6 calendar months, and thereafter at intervals not to exceed 6 months, 400 lifts, or 300 cycles. EASA AD 2015–0226R5 specifies performing the hoist slip load test according to the compliance time of the design approval holder instead. After the installation (not reinstallation) of a modified hoist, EASA AD 2015–0226R5 requires performing an initial hoist load check/test prior to hoisting operation, whereas this proposed AD would not.

Interim Action

The FAA considers this proposed AD would be an interim action. The inspection reports that would be required by this proposed AD will enable better insight into the condition of the hoists, and eventually be used to develop final action to address the unsafe condition. Once final action has been identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 2,911 hoists installed on 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.

Replacing a clutch would take about 8 work-hours and parts would cost about $24,000 for an estimated cost of $24,680 per hoist. Alternatively, replacing a hoist would take about 8 work-hours and parts would cost about $200,000 for an estimated cost of $200,680 per hoist.

Revising the existing RFM for your helicopter and installing placards would take about 0.5 work-hour for an estimated cost of $43 per helicopter and $125,173 for the U.S. fleet.

Deactivating or removing a hoist that experiences a partial peel out would take about 2 work-hours for an estimated cost of $170.

Reviewing records would take about 0.5 work-hour for an estimated cost of $43 per helicopter and $125,173 for the U.S. fleet.

Inspecting the cable and performing a cable conditioning lift and hoist slip load test would take about 2 work-hours for an estimated cost of $170 per helicopter and $494,870 for the U.S. fleet per inspection cycle. A (field) load check tool would cost about $11,171. Reporting the hoist slip load test information would take about 0.25 work-hour for a cost of $21 per helicopter and $61,131 for the U.S. fleet per reporting cycle.

Replacing the cable would take about 3 work-hours and parts would cost about $3,150 for a total replacement cost of $3,405 per hoist.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 0.25 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism

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

For the reasons discussed, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Goodrich Externally-Mounted Hoist Assemblies: Docket No. FAA–2020–1120; Project Identifier 2019–SW–056–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by November 1, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to helicopters, certificated in any category, with an externally mounted Goodrich hoist assembly (hoist) with a part number (P/N) or base P/N listed under the Hoist Family column in Table 1 of Goodrich Alert Service Bulletin No. 44301–10–18, Revision 6, dated October 10, 2016 (ASB 44301–10–18 Rev 6), installed. An affected hoist may be installed on but not limited to the following:

Note 1 to the introductory text of paragraph (c): The hoist P/N may be included as a component of a different part-numbered kit.

(1) Airbus Helicopters (previously Eurocopter France) Model AS332L, AS332L1, AS332L2, AS350B2, AS350B3, AS365N3, and EC225LP helicopters;

(2) Airbus Helicopters Deutschland GmbH (AHD) (previously Eurocopter Deutschland GmbH) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, MBB–BK 117 C–2, and MBB–BK 117 D–2 helicopters;

(3) Bell Textron Canada Limited (previously Bell Helicopter Textron Canada Limited) Model 429 and 430 helicopters;

(4) Bell Textron Inc. (previously Bell Helicopter Textron Inc.) Model 205A, 205A–1, 205B, 212, 412, 412CF, and 412EP helicopters;

(5) Leonardo S.p.a. (previously Finmeccanica S.p.A., AgustaWestland S.p.A) Model A109, A109A, A109A II, A109C, A109E, A109K2, A109S, AB139, AB412, AB412 EP, AW109SP, and AW139, helicopters;

(6) MD Helicopters, Inc. (MDHI) Model MD900 helicopters;

(7) Transport and restricted category helicopters, originally manufactured by Sikorsky Aircraft Corporation, Models S–61A, S–61L, S–61N, S–76A, S–76B, S–76C, S–76D, and S–92A; and

(8) Restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by hoists failing lower load limit inspections. The FAA is issuing this AD to prevent failure of the hoist overload clutch. The unsafe condition, if not addressed, could result in an in-flight failure of the hoist, which could result in injury to a person being lifted.

(f) Compliance

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

(g) Required Actions

(1) For a hoist without the number ''4'' as the first digit of its serial number (S/N):

(i) For hoists that use operating hours to monitor hoist operation, within 12 months after the effective date of this AD or before the hoist accumulates 55 total hoist operating hours, whichever occurs first, replace the hoist. For purposes of this AD, hoist operating hours are counted anytime the hoist motor is operating.

(ii) For hoists that use hoist cycles (cycles) to monitor hoist operation, within 12 months after the effective date of this AD or before the hoist accumulates 1,200 total cycles, whichever occurs first, replace the hoist. For purposes of this AD, a cycle is counted anytime the cable is extended and then retracted a minimum of 16 feet (5 meters) during flight or on the ground, with or without a load.

(iii) For hoists that use hoist lifts (lifts) to monitor hoist operation, within 12 months after the effective date of this AD or before the hoist accumulates 1,600 total lifts, whichever occurs first, replace the hoist. For purposes of this AD, a lift is counted anytime the cable is unreeled or recovered or both with a load attached to the hook, regardless of the length of the cable that is deployed or recovered. An unreeling or recovery of the cable with no load on the hook is not a lift. If a load is applied for half an operation (*i.e.* unreeling or recovery), it must be counted as one lift.

(2) For all hoists identified in the introductory text of paragraph (c) of this AD, before further flight, install placards and revise the existing Rotorcraft Flight Manual (RFM) for your helicopter by inserting a copy of this AD or by making pen-and-ink changes in Section 2, Limitations, of the RFM Supplement for the hoist as follows:

(i) For 500 pound (lb) rated hoists, install a placard with the information in Figure 1 to paragraph (g)(2)(i) of this AD in full view of the hoist operator and add the information in Figure 1 to paragraph (g)(2)(i) of this AD to the existing RFM for your helicopter:

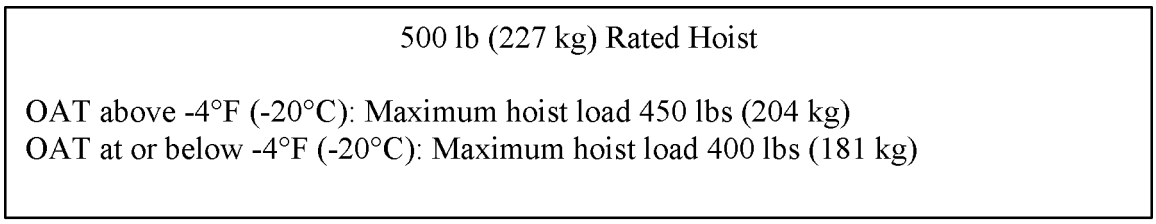

Figure 1 to Paragraph (g)(2)(i)

(ii) For 600 lb rated hoists, install a placard with the information in Figure 2 to paragraph (g)(2)(ii) of this AD in full view of the hoist operator and add the information in Figure 2 to paragraph (g)(2)(ii) of this AD to the existing RFM for your helicopter:

600 lb (272 kg) Rated Hoist

OAT above 32°F (0°C): Maximum hoist load 550 lbs (249 kg)
OAT at or below 32°F (0°C): Maximum hoist load 500 lbs (227 kg)

Figure 2 to Paragraph (g)(2)(ii)

(iii) For 500 and 600 lb rated hoists, install a placard with the information in Figure 3 to paragraph (g)(2)(iii) of this AD in full view of the pilot and add the information in Figure 3 to paragraph (g)(2)(iii) of this AD to the existing RFM for your helicopter.

Hoist Operations

Warning: Excessive maneuvering with extended cable and load on the hook may cause uncommanded peel out of the cable.

Maximum sustained bank angle in turn is 20°

Figure 3 to Paragraph (g)(2)(iii)

(iv) For 500 and 600 lb rated hoists, install a placard with the information in Figure 4 to paragraph (g)(2)(iv) of this AD in full view of the pilot and add the information in Figure 4 to paragraph (g)(2)(iv) of this AD to the existing RFM for your helicopter:

Hoist - Partial Peel Out

If a partial peel out occurs, before next flight, cease using the hoist. A partial peel out occurs when 20 inches (0.5 meter) or more of the hoist cable reels off of the hoist cable drum in one overload clutch slip incident.

Figure 4 to Paragraph (g)(2)(iv)

(3) For all hoists identified in the introductory text of paragraph (c) of this AD, as of the effective date of this AD, if a partial peel out occurs, deactivate or remove the hoist from service before further flight. For purposes of this AD, a partial peel out occurs when 20 inches (0.5 meter) or more of the hoist cable reels off of the hoist cable drum in one overload clutch slip incident.

(4) For all hoists identified in the introductory text of paragraph (c) of this AD, within 30 days after the effective date of this AD, review the helicopter's hoist slip load test records. If the cable was load-tested at more than 1,500 lbs or at an unknown weight during one or more cable pulls, replace the cable with an airworthy cable before the next hoist operation.

(5) For all hoists identified in the introductory text of paragraph (c) of this AD, within 30 days after the effective date of this AD, unless already done within the last 6 calendar months, and thereafter at intervals not to exceed 6 months, 400 lifts, or 300 cycles, whichever occurs first:

(i) Visually inspect the first 18 inches (45 cm) of the cable from the hook assembly for broken wires and necked down sections. If there is a broken wire or necked down section, replace the cable with an airworthy cable before further flight.

(ii) Within the first 18 inches (45 cm) of the cable from the hook assembly, measure the diameter of the cable at the most necked down area. If the diameter measurement is less than 0.185 inch (4.7 mm), replace the cable with an airworthy cable before further flight.

(iii) Using load check tool P/N 49900–889–103 or 49900–889–104, perform a cable conditioning and a hoist slip load test by following the Accomplishment Instructions, paragraphs 3.C.(1) through 3.C.(3)(g) of ASB 44301–10–18 Rev 6. If the average of the five test values is less than the limit shown in Table 2 for 600 lb rated hoists or Table 3 for 500 lb rated hoists of ASB 44301–10–18 Rev 6, remove the hoist from service before further flight.

(iv) Visually inspect the first 30 feet (10 meters) of the cable from the hook assembly for broken wires, necked down sections, kinks, bird-caging, flattened areas, abrasion, and gouging. It is permissible for the cable to have a slight curve immediately after performing the hoist slip load test. If there is a broken wire, necked down section, kink, or any bird-caging; or if there is a flattened area, any abrasion, or a gouge that exceeds allowable limits, replace the cable with an airworthy cable before further flight.

(v) Repeat the actions specified in paragraphs (g)(5)(i) and (ii) of this AD. If there is a broken wire or necked down section or the cable diameter measurement is less than 0.185 inch (4.7 mm), replace the cable with an airworthy cable before further flight.

(6) Within 30 days after accomplishing the hoist slip load test, report the information requested in Appendix 1 to this AD by email to *ASB.SIS-CA@utas.utc.com*; or mail to Goodrich, Collins Aerospace; 2727 E Imperial Hwy., Brea, CA 92821.

(7) As of the effective date of this AD, do not install as a replacement part or as an original installation an externally-mounted hoist with a P/N identified in the introductory text of paragraph (c) of this AD unless it has an improved overload clutch assembly with the number ''4'' as the first digit of the S/N.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

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

(2) For Goodrich service information identified in this AD, contact Collins Aerospace; 2727 E Imperial Hwy., Brea, CA 92821; telephone (714) 984–1461. You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2015–0226R5, Revision 5, dated July 23, 2020. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2020–1120.

Appendix 1 to AD ####–##–##

Hoist Slip Load Test Results (Sample Format)

Provide the following information by email to *ASB.SIS-CA@utas.utc.com*; or mail to Goodrich, Collins Aerospace; 2727 E Imperial Hwy., Brea, CA 92821.

Helicopter Owner/Operator Name:
Email Address:
Telephone Number:

Helicopter Model and Serial Number:

Hoist Part Number:
Hoist Serial Number:
Time since Last Hoist Overhaul (months):
Hoist Operating Hours:
Hoist Cycles:
Hoist Lifts:

Date and Location Test was Accomplished:
Point of Contact for Additional Information:
Air Temperature:
Gearbox Lubricant:

Hoist Slip Load Test Value 1:
Hoist Slip Load Test Value 2:
Hoist Slip Load Test Value 3:
Hoist Slip Load Test Value 4:
Hoist Slip Load Test Value 5:

Hoist Slip Load Test Averaged Test Value:

Any notes or comments:

Issued on September 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–21076 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0427; Project Identifier 2008–SW–72–AD]

RIN 2120–AA64

Airworthiness Directives; Arrow Falcon Exporters, Inc. (Previously Utah State University); California Department of Forestry; Firefly Aviation Helicopter Services (Previously Erickson Air-Crane Co.); Garlick Helicopters, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC (Previously Western International Aviation, Inc.); International Helicopters, Inc.; Precision Helicopters, LLC; Robinson Air Crane, Inc.; San Joaquin Helicopters (Previously Hawkins and Powers Aviation, Inc.); S.M.&T. Aircraft (Previously US Helicopters, Inc., UNC Helicopter, Inc., Southern Aero Corporation, and Wilco Aviation); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc. (Previously Jamie R. Hill and Southwest Florida Aviation); Tamarack Helicopters, Inc. (Previously Ranger Helicopter Services, Inc.); US Helicopter, Inc. (Previously UNC Helicopter, Inc.); West Coast Fabrication; and Williams Helicopter Corporation (Previously Scott Paper Co.) Model AH–1G, AH–1S, HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters; and Southwest Florida Aviation Model UH–1B (SW204 and SW204HP) and UH–1H (SW205) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA is withdrawing a notice of proposed rulemaking (NPRM) that proposed to supersede Airworthiness Directive (AD) AD 2002–20–01, which applies to certain Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters; and Southwest Florida Aviation Model SW204, SW204HP, SW205, and SW205A–1 helicopters, manufactured by Bell Helicopter Textron, Inc. (BHTI) for the Armed Forces of the United States. The NPRM would have required removing certain serial-numbered tension-torsion (TT) straps from service, reducing the retirement life for other TT straps, and establishing a retirement life in terms of calendar time in addition to hours time-in-service (TIS) for certain other affected TT straps. The NPRM also would have added two model helicopters to the applicability of the AD. The NPRM was prompted by fatigue cracking in certain TT straps that have stainless steel filament windings and a determination that corrosion damage, which is related to calendar time, necessitated a calendar time retirement life for certain TT straps in addition to the retirement life based on hours TIS. The NPRM was also prompted by fatigue cracking in other TT straps with encased thin stainless steel plates. Since issuance of the NPRM, the FAA has re-reviewed the available information and determined that the totality of the available information does not support issuance of a final rule. Accordingly, the NPRM is withdrawn.

DATES: As of September 30, 2021 the proposed rule, which was published in the **Federal Register** on April 22, 2010 (75 FR 20933), is withdrawn.

ADDRESSES:

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–2010–0427; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD action, 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: Jurgen Priester, Aviation Safety Engineer, Delegation Oversight Section, DSCO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5159; email *jurgen.e.priester@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued an NPRM that proposed to amend 14 CFR part 39 by removing AD 2002–20–01, Amendment 39–12895 (67 FR 61771, October 2, 2002), which applies to restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters; and Southwest Florida Aviation Model SW204, SW204HP, SW205, and SW205A–1 helicopters, manufactured by BHTI for the Armed Forces of the United States. The NPRM published in the **Federal Register** on April 22, 2010 (75 FR 20933). The NPRM would have applied to Model AH–1G, AH–1S, HH–1K, TH–1F, TH–1L, UH -A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters with BHTI main rotor TT strap, part number (P/N) 204–011–113–1, 204–012–112–1, 204–012–112–5, 204–012–112–7, 204–012–122–1, 204–012–122–5, 204 310–101–101, or Bendix Energy Controls Co. P/N 2601139, 2601399, 2601400, or 2606650, installed; and Southwest Florida Aviation Model UH–1B (SW204 and SW204HP) and UH–1H (SW205) helicopters. The NPRM was prompted by fatigue cracking in certain TT straps that have stainless steel filament windings and a determination that corrosion damage, which is related to calendar time, necessitates a calendar time retirement life for certain TT straps in addition to the retirement life based on hours TIS. The NPRM was also prompted by fatigue cracking in other TT straps with encased thin stainless steel plates.

The NPRM proposed to require removing certain serial-numbered TT straps from service, reducing the retirement life for other TT straps, and establishing a retirement life in terms of calendar time in addition to hours TIS for certain other affected TT straps. The NPRM also proposed to add two model helicopters to the applicability. The proposed actions were intended to prevent failure of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Actions Since the NPRM Was Issued

Since issuance of the NPRM, the FAA has re-reviewed the available information and failure data used to justify issuance of the NPRM, and reviewed the service difficulty data produced since the NPRM was issued. Through that review, the FAA determined that there have not been any further reported problems with the affected part number TT straps since the NPRM was issued. Based on that review, the FAA concluded that the totality of the available information and the lack of additional reports does not support issuance of a final rule. The potential unsafe condition identified as the justification for issuance of the NPRM has not materialized. Therefore, the FAA has determined that AD action is not appropriate.

Withdrawal of the NPRM constitutes only such action and does not preclude the FAA from further rulemaking on this issue, nor does it commit the FAA to any course of action in the future.

Comments

The FAA gave the public the opportunity to comment on the NPRM and received 38 comments. The FAA received comments from individual commenters as well as from organizations on a variety of topics, including the costs estimates, compliance times, and requests to withdraw the NPRM. You may examine the comments received in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2010–0427.

The FAA acknowledges these comments to the NPRM. However, because the FAA is withdrawing the NPRM, the commenter's requests are no longer necessary.

FAA's Conclusions

Upon further consideration of the available information, the FAA has determined that the NPRM is unnecessary. Accordingly, the NPRM is withdrawn.

Regulatory Findings

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule. This action therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

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

The Withdrawal

■ Accordingly, the notice of proposed rulemaking, Docket No. FAA–2010–0427, which was published in the **Federal Register** on April 22, 2010 (75 FR 20933), is withdrawn.

Issued on September 23, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–21050 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0833; Project Identifier MCAI–2021–00245–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 supersede Airworthiness Directive (AD) 2020–18–04, which applies to all Airbus SAS Model A350–941 and –1041 airplanes. AD 2020–18–04 requires a one-time health check of the slat power control unit (PCU) torque sensing unit (TSU), a detailed inspection of the slat transmission systems, corrective actions if necessary, and track 12 slat gear rotary actuator (SGRA) water drainage and vent plug cleaning. Since the FAA issued AD 2020–18–04, it has been determined that the one-time health check must be repetitive instead to monitor the TSU wear, and that the water drainage and vent plug cleaning is no longer required. This proposed AD would require repetitive health checks of the slat PCU TSU, a detailed visual inspection of the slat transmission systems, and corrective actions if necessary; 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 November 15, 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 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–2021–0833.

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–2021–0833; 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–2021–0833; Project Identifier MCAI–2021–00245–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

The FAA issued AD 2020–18–04, Amendment 39–21225 (85 FR 54896, September 3, 2020) (AD 2020–18–04), which applies to all Airbus SAS Model A350–941 and –1041 airplanes. AD 2020–18–04 requires a one-time health check of the slat PCU TSU for discrepancies, and corrective actions if necessary; a detailed inspection of the left-hand (LH) and right-hand (RH) slat transmission systems for discrepancies, and corrective actions if necessary; and LH and RH track 12 SGRA water drainage and vent plug cleaning (which includes an inspection for moisture). The FAA issued AD 2020–18–04 to address a slat system jam during landing, which could lead to a double shaft disconnection/rupture, potentially causing one or more slat surfaces to be no longer connected to either the slat wing tip brake or the slat PCU, possibly resulting in reduced control of the airplane.

Actions Since AD 2020–18–04 Was Issued

Since the FAA issued AD 2020–18–04, it has been determined that the one-time health check must be repetitive instead to monitor the TSU wear, and that the water drainage and vent plug cleaning is no longer required.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0053R1, dated April 19, 2021 (EASA AD 2021–0053R1, also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. EASA AD 2021–0053R1 supersedes EASA AD 2020–0163R2, dated September 10, 2020 (which revised EASA AD 2020–0163R1, dated August 7, 2020, which corresponds to FAA AD 2020–18–04). This proposed AD was prompted by a report of a slat system jam during landing. The FAA is proposing this AD to address a slat system jam during landing, which could lead to a double shaft disconnection/rupture, potentially causing one or more slat surfaces to be no longer connected to either the slat wing tip brake or the slat PCU, possibly resulting in reduced control of the airplane. See the MCAI for additional background information.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2020–18–04, this proposed AD would retain certain requirements of AD 2020–18–04. Those requirements are referenced in EASA AD 2021–0053R1, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0053R1 describes procedures for a repetitive health check of the slat PCU TSU for discrepancies, and corrective actions if necessary; a detailed visual inspection of the LH and RH slat transmission systems for discrepancies, and corrective actions 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 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 pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0053R1 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 2021–0053R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0053R1 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 2021–0053R1 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 2021–0053R1. Service information required by EASA AD 2021–0053R1 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0833 after the FAA final rule is published.

Interim Action

The FAA considers this proposed AD interim action. AD 2020–18–04 is also interim action. Once final action has been identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this proposed AD affects 15 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 16 work-hours × $85 per hour = Up to $1,360 per inspection cycle.	$0	Up to $1,360	Up to $20,400 per inspection cycle.

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
10 work-hours × $85 per hour = $850	$275,300	$276,150

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:

■ a. Removing Airworthiness Directive (AD) 2020–18–04, Amendment 39–21225 (85 FR 54896, September 3, 2020); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2021–0833; Project Identifier MCAI–2021–00245–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 15, 2021.

(b) Affected ADs

This AD replaces AD 2020–18–04, Amendment 39–21225 (85 FR 54896, September 3, 2020) (AD 2020–18–04).

(c) Applicability

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

(d) Subject

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

(e) Reason

This AD was prompted by a report of a slat system jam during landing and the determination that an inspection must be repetitive to monitor torque sensor unit (TSU) wear. The FAA is issuing this AD to address a slat system jam during landing, which could lead to a double shaft disconnection/rupture, potentially causing one or more slat surfaces to be no longer connected to either the slat wing tip brake or the slat power control unit (PCU), possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0053R1, dated April 19, 2021 (EASA AD 2021–0053R1).

(h) Exceptions to EASA AD 2021–0053R1

(1) Where EASA AD 2021–0053R1 refers to March 11, 2021 (the effective date of EASA AD 2021–0053, dated February 25, 2021), this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2021–0053R1 specifies compliance times for accomplishment of certain actions, replace the text ''but not exceeding the compliance time for the repeat health check as determined in accordance with the instructions of AOT [Alert Operators Transmission] A27P015–20, or AOT A27P016–20,'' with ''but within the applicable compliance time specified in paragraph 4.2.3.1 of AOT A27P015–20; or 4.2.2.2.2 or 4.2.2.3.2 of AOT A27P016–20; as applicable.''

(3) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0053R1.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0053R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC*): Except as required by paragraph (j)(2) of this AD, if any service information referenced in EASA AD 2021–0053R1 that contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, 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 instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2021–0053R1, 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–2021–0833.

(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 September 21, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–20804 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0839; Project Identifier MCAI–2020–01697–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–21–01, which applies to certain Airbus Helicopters Model AS–365N2, AS 365N3, EC 155B, EC155B1, and SA–365N1 helicopters. AD 2020–21–01 requires modifying the main gearbox (MGB) tail rotor (T/R) drive flange installation. Since the FAA issued AD 2020–21–01, the FAA has determined that additional helicopters are affected by the unsafe condition. This proposed AD would continue to require modifying the MGB T/R drive flange installation, and would also include new helicopters in the applicability for the required 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 November 15, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie,

TX 75052; phone: (972) 641–0000 or (800) 232–0323; fax: (972) 641–3775; or at *https://www.airbus.com/helicopters/services/support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0839; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (516) 228–7330; email: *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0839; Project Identifier MCAI–2020–01697–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (516) 228–7330; email: *andrea.jimenez@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–21–01, Amendment 39–21274 (85 FR 63440, October 8, 2020), (AD 2020–21–01), for certain Airbus Helicopters Model AS–365N2, AS 365N3, EC 155B, EC155B1, and SA–365N1 helicopters. AD 2020–21–01 requires modifying the MGB T/R drive flange installation. AD 2020–21–01 was prompted by several reported occurrences of loss of tightening torque of the Shur-Lok nut, which serves as a retainer of the T/R drive flange.

EASA AD 2020–0287, dated December 21, 2020 (EASA AD 2020–0287), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for certain AS 365 N2, AS 365 N3, SA 365 C1, SA 365 C2, SA 365 C3, SA 365 N and SA 365 N1 helicopters; and all EC 155 B and EC 155 B1 helicopters. Model SA 365 C3 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

EASA advised of reported occurrences of loss of tightening torque of the Shur-Lok nut, which serves as a retainer of the T/R drive flange of the MGB. EASA also advises of subsequent investigation that determined that these occurrences were the result of failure of the Shur-Lok nut locking function, which is normally ensured by two anti-rotation tabs engaged into two slots at the end of the MGB output shaft pinion. EASA states this condition could lead to the loosening of the Shur-Lok nut and disengagement of the Shur-Lok nut threads, possibly resulting in reduction of T/R drive control, rear transmission vibrations, and subsequent reduced control of the helicopter.

To address this unsafe condition, EASA issued a series of ADs, initially with EASA AD No. 2014–0165, dated July 14, 2014 (EASA AD 2014–0165), which required a one-time inspection of the radial play inside the T/R drive flange and the condition of the Shur-Lok nut. Shortly after, EASA issued EASA AD No. 2014–0179, dated July 25, 2014 (EASA AD 2014–0179) to supersede EASA AD 2014–0165. EASA AD 2014–0179 retained the requirements of EASA AD 2014–0165 and expanded the applicability of helicopters affected by the unsafe condition. EASA later revised EASA AD 2014–0179 to Revision 1, dated July 29, 2014, to revise the applicability and specify updated related service information, and again to Revision 2, dated April 11, 2016 (EASA AD 2014–0179R2), to reduce the applicability and specify additional updated related service information.

Since EASA issued EASA AD 2014–0179R2, another occurrence was reported that involved an on-ground loss of T/R synchronization, resulting from disengagement of the Shur-Lok nut. This additional occurrence prompted EASA to issue EASA AD 2019–0046, dated March 11, 2019 (EASA AD 2019–0046) (which prompted FAA AD 2020–20–01), to require installation of modification 07 63C81, which consists of installing a rear output stop with 5 spigots on the T/R shaft flexible coupling. According to Airbus Helicopters, the 5 spigots will come into contact with the row of 5 bolt heads of the front T/R shaft if the T/R drive flange moves backwards. This contact limits backward displacement of the T/R drive flange and subsequently prevents T/R drive flange disengagement.

Since EASA issued EASA AD 2019–0046, Airbus Helicopters reviewed the applicability of modification 07 63C81 and developed an additional 4 spigot modification (07 63D01) that was applicable to an additional subset of in-service helicopter models that were initially excluded from the applicability of EASA AD 2014–0179R2, prompting EASA to issue EASA AD 2020–0212, dated October 5, 2020 (EASA AD 2020–0212), to require either a 4 spigot or 5 spigot modification for the originally excluded helicopter models (which was dependent on the front shaft configuration, on the T/R shaft flexible coupling).

Actions Since AD 2020–21–01 Was Issued

Since the FAA issued AD 2020–21–01, EASA issued EASA AD 2020–0287, which supersedes EASA AD 2020–0212. EASA advises that modification of the MGB T/R drive flange is necessary for additional helicopters that were originally excluded from the previous EASA ADs due to date of manufacture. This condition, if not addressed, could result in loosening of the Shur-Lok nut, possibly resulting in disengagement of the Shur-Loc nut threads, reduction of T/R drive control, rear transmission vibrations, and subsequent reduced control of the helicopter.

Accordingly, EASA AD 2020–0287 retains the modification of the MGB T/R drive flange installation. EASA AD 2020–0287 also includes new helicopters in the applicability for the required actions (Model SA–365C1, SA–365C2, and SA–365N helicopters on which Airbus Helicopters modification 0763B64 has been embodied; and Model EC 155B and EC155B1 helicopters without modification 0763B64 embodied).

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.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information.

Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–63.00.26, Revision 0, dated July 22, 2020, for Model AS365N helicopters and non FAA-type certificated military Model AS365Fs helicopters; and Airbus Helicopters ASB No. SA365–65.52, Revision 1 and dated July 22, 2020, for Model SA–365C1 and SA–365C2 helicopters and non FAA-type certificated Model SA–365C3 helicopters. This service information specifies procedures for modifying the MGB T/R drive flange installation, which include installing a rear (aft) output stop between the T/R drive flange and T/R drive shaft. These documents are distinct since they apply to different helicopter models.

This proposed AD also requires Airbus Helicopters ASB No. AS365–63.00.19, Revision 1, dated January 31, 2019; and Airbus Helicopters ASB No. EC155–63A013, Revision 1, dated January 31, 2019; which the Director of the Federal Register approved for incorporation by reference as of November 12, 2020 (85 FR 63440, October 8, 2020).

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

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2020–21–01. This proposed AD would require modifying the MGB T/R drive flange installation, and would also include new helicopters in the applicability for the required actions. This proposed AD would also require accomplishing the actions specified in the service information already described.

Differences Between This Proposed AD and the EASA AD

EASA AD 2020–0287 specifies compliance times of 600 flight hours or a certain time frame (months). However, this proposed AD would only require the compliance time of 600 hours time-in-service.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 53 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

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification (46 helicopters) (retained actions from AD 2020–21–01).	14 work-hours × $85 per hour = $1,190.	$2,704	$3,894	$179,124.
Modification (new proposed action)	14 work-hours × $85 per hour = $1,190.	Up to $18,474	Up to $19,664	Up to $1,042,192.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2020–21–01, Amendment 39–21274 (85 FR 63440, October 8, 2020); and

■ b. Adding the following new airworthiness directive:

Airbus Helicopters: Docket No. FAA–2021–0839; Project Identifier MCAI–2020–01697–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by November 15, 2021.

(b) Affected ADs

This AD replaces AD 2020–21–01, Amendment 39–21274 (85 FR 63440, October 8, 2020) (AD 2020–21–01).

(c) Applicability

This AD applies to the Airbus Helicopters model helicopters, certificated in any category, as identified in paragraphs (c)(1) through (3) of this AD.

(1) Model AS–365N2, AS 365 N3, and SA–365N1, all serial numbers on which Airbus Helicopters modification 0763B64 has been embodied, except those on which Airbus Helicopters modification 0763C81 has been embodied.

(2) Model SA–365C1, SA–365C2, and SA–365N, all serial numbers on which Airbus Helicopters modification 0763B64 has been embodied.

(3) Model EC 155B and EC155B1, all serial numbers, except those on which Airbus Helicopters modification 0763C81 has been embodied.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6500, Tail Rotor Drive System.

(e) Unsafe Condition

This AD was prompted by several reported occurrences of loss of tightening torque of the Shur-Lok nut, which serves as a retainer of the main gear box (MGB) tail rotor (T/R) drive flange. The FAA is issuing this AD to detect and address loss of tightening torque of the Shur-Lok nut. The unsafe condition, if not addressed, could result in loosening of the Shur-Lok nut, possibly resulting in disengagement of the Shur-Lok nut threads, reduction of T/R drive control, rear transmission vibrations, and subsequent reduced control of the helicopter.

(f) Compliance

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

(g) Retained Actions of Paragraph (e) of AD 2020–21–01 With No Changes

This paragraph restates the requirements of paragraph (e) of AD 2020–21–01 with no changes. Within 600 hours time-in-service after November 12, 2020 (the effective date of AD 2020–21–01:

(1) For Model AS–365N2, AS 365N3, and SA–365N1 helicopters:

(i) Without removing the tail drive shaft flange (a), remove the sliding flange (b) from the flexible coupling (c) as shown in Detail ''B'' of Figure 1, PRE MOD, of Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–63.00.19, Revision 1, dated January 31, 2019 (ASB AS365–63.00.19, Revision 1); replace the 3 bolts (d) and remove from service the 3 washers (e).

(ii) Install the sliding flange (b) with aft output stop (1) part number (P/N) 365A32–7836–20 as shown in Detail ''B'' of Figure 1, POST MOD, of ASB AS365–63.00.19, Revision 1, and by following the Accomplishment Instructions, paragraph 3.B.2.b, of ASB AS365–63.00.19, Revision 1.

(2) For Model EC 155B and EC155B1 helicopters with modification 0763B64 embodied:

(i) Without removing the Shur-Lok nut (a), remove the sliding flange (b) from the flexible coupling (c) as shown in Detail ''B'' of Figure 1, PRE MOD, of Airbus Helicopters ASB No. EC155–63A013, Revision 1, dated January 31, 2019 (ASB EC155–63A013, Revision 1); replace the 3 bolts (d) and remove from service the 3 washers (e).

(ii) Install the sliding flange (b) with aft output stop (1) P/N 365A32–7836–20 as shown in Detail ''B'' of Figure 1, POST MOD, of ASB EC155–63A013, Revision 1, and by following the Accomplishment Instructions, paragraph 3.B.2.b, of ASB EC155–63A013, Revision 1.

Note 1 to paragraph (g)(2)(ii): ASB EC155–63A013, Revision 1 refers to the ''aft output stop'' as ''rear output stop.''

(h) New Required Actions

For Model SA–365C1, SA–365C2, and SA–365N helicopters; and Model EC 155B and EC155B1 helicopters without modification 0763B64 embodied: Within 600 hours time-in-service after the effective date of this AD, modify the MGB T/R drive flange installation, in accordance with paragraph 3.B.2., ''Procedure,'' of the Accomplishment Instructions of the applicable service information specified in paragraphs (h)(1) through (3) of this AD, except as specified in paragraph (i) of this AD.

(1) Airbus Helicopters ASB SA365–65.52, Revision 1, dated July 22, 2020.

(2) Airbus Helicopters ASB AS365–63.00.26, Revision 0, dated July 22, 2020.

(3) ASB EC155–63A013, Revision 1.

(i) Exceptions to Service Information

Where the service information identified in paragraph (h) of this AD specifies to discard certain parts, this AD requires removing those parts from service.

(j) Special Flight Permits

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)(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.

(l) Related Information

(1) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (516) 228–7330; email: *andrea.jimenez@faa.gov.*

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; phone: (972) 641–0000 or (800) 232–0323; fax: (972) 641–3775; or at *https://www.airbus.com/helicopters/services/support.html.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2020–0287, dated December 21, 2020. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–0839.

Issued on September 24, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–21199 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Periodicals Pending Authorization Postage

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards*

of the United States Postal Service, Domestic Mail Manual (DMM®) to revise the process for calculating postage on a Periodicals publication pending authorization.

DATES: Submit comments on or before November 1, 2021.

ADDRESSES: Mail or deliver written comments to the Director, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''Periodicals Pending Authorization Postage''. Faxed comments are not accepted. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Elke Reuning-Elliott at (202) 268–4063 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: Currently, postage for Periodicals pending authorization is calculated by completing a PS Form 3541, *Postage Statement-Periodicals,* and charging the price for the applicable class of mail determined by the eligibility of the mailpiece. Based on the numerous pricing differences in Periodicals and other classes of mail, this process is labor intensive and does not provide exact pricing.

The Postal Service is proposing to revise the process and calculate pending postage by assigning the existing applicable class of mail prices based upon common characteristics of shape and weight. Each applicable class of mail price will be expressed as a percentage from the corresponding Periodicals price. This new process will simplify the calculation process during the authorization review period, and the refund process when a Periodicals publication is approved.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

The Postal Service is proposing to implement this change effective January 2022.

We believe this proposed revision will provide customers with a more efficient and easier process.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[Amended]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Mail Letters, Flats, and Parcels

* * * * *

207 Periodicals

* * * * *

5.0 Applying for Periodicals Authorization

* * * * *

5.2 Mailing While Application Pending

* * * * *

[Renumber 5.2.3 and 5.2.4 as 5.2.4 and 5.2.5, add new 5.2.3 to read as follows:]

5.2.3 Pending Postage

Postage for a Periodicals publication pending authorization is calculated by applying the applicable percent in Exhibit 5.2.3 to PS Form 3541, Part P, Line P–1.

Exhibit 5.2.3 Pending Postage

Pending class of mail	Percent
USPS Marketing Mail Letters	*00
USPS Marketing Mail Flats	63
Nonprofit USPS Marketing Mail Letters	*00
Nonprofit USPS Marketing Mail Flats	40
Bound Printed Matter Flats	146
Bound Printed Matter Parcels	*00
Parcel Select Parcels	585
First-Class Mail Letters	95
First-Class Mail Flats	427
First-Class Package Service-R	311
Priority Mail	545

*Use Periodicals prices.

* * * * *

Ruth B. Stevenson,

Chief Counsel, Ethics & Legal Compliance.

[FR Doc. 2021–21078 Filed 9–29–21; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA–R09–UST–2021–0597; FRL–8977–01–R9]

Approval of State Underground Storage Tank Program Revisions; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act, as amended, the Environmental Protection Agency (EPA) proposes to take direct final action to approve revisions to the State of Nevada's Underground Storage Tank (UST) program since the previous authorization on July 17, 1998. This action is based on the EPA's determination that these revisions satisfy all requirements needed for program approval. In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is approving the changes by direct final authorization because we believe this action is not controversial and do not expect comments that oppose it.

DATES: Send written comments by November 1, 2021.

ADDRESSES: Submit any comments, identified by EPA–R09–UST–2021–0597, by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: platukyte.simona@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA–R09–UST–2021–0597. The EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov,* including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The Federal *https://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of 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. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

The EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance with additional submission methods.

You can view and copy the documents that form the basis for this action and associated publicly available materials through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Simona Platukyte, Project Officer, Underground Storage Tank Program, EPA Region 9, phone number: (415) 972–3310, email address: *platukyte.simona@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 9 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as no mail, courier, or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is approving the State's UST program submittal as a direct authorization without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final authorization. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final authorization will be withdrawn, and all public comments received will be addressed in a subsequent final authorization based on this proposed authorization. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. For additional information, see the direct final authorization published in the ''Rules and Regulations'' section of this **Federal Register**.

Authority: This proposed authorization is issued under the authority of sections 2002(a), 9004, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Dated: September 19, 2021.

Deborah Jordan,

Acting Regional Administrator, EPA Region 9.

[FR Doc. 2021–20860 Filed 9–29–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–123; RM–11890; DA 21–1162; FR ID 49528]

Television Broadcasting Services Fort Bragg, California

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by One Ministries, Inc. (Petitioner), requesting the allotment of reserved noncommercial educational channel * 4 at Fort Bragg, California, as the community's second local service in the DTV Table of Allotments and its first local NCE television service.

DATES: Comments must be filed on or before November 1, 2021 and reply comments on or before November 15, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner as follows: Keith Leitch, One Ministries, Inc., P.O. Box 1118, Santa Rosa, California 95402.

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

SUPPLEMENTARY INFORMATION: In support of its channel allotment request, the Petitioner states that Fort Bragg is a community deserving of a new television broadcast service. According to the Petitioner, Fort Bragg (pop. 7,179/2010 Census) has a mayor, vice mayor, city manager, and two council members; police, public works, and utility departments; and a library, numerous businesses and places of worship, and its own ZIP Code. In addition, channel 8 (KQSL(TV)) is already allotted to Fort Bragg. The Petitioner states its intention to file an application for channel * 4, if allotted, and take all necessary steps to obtain a construction permit. The Commission concludes the request to amend the Post-Transition Table of DTV Allotments warrants consideration. The Petitioner's proposal would result in a second local service to Fort Bragg consistent with the Commission's television allotment policies. Channel * 4 can be allotted to Fort Bragg, consistent with the minimum geographic spacing requirements for new DTV allotments in section 73.623(d) of the Commission's rules, at 39°41′38.4″ N and 123°34′46.7″ W. In addition, the allotment point complies with section 73.625(a)(1) of the rules as the entire community of Ft. Bragg is encompassed by the 35 dBμ contour.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–123; RM–11890; DA 21–1162, adopted September 15, 2021, and released September 16, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.622 [Amended]

■ 2. In § 73.622(i), amend the table ''Post-Transition Table of DTV Allotments'' under California by revising the entry for Fort Bragg to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
CALIFORNIA	
* * * * *	
Fort Bragg	*4, 8
* * * * *	

[FR Doc. 2021–20636 Filed 9–29–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0054; FF09E22000 FXES11130900000 212]

RIN 1018–BE43

Endangered and Threatened Wildlife and Plants; Removing the Braken Bat Cave Meshweaver From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the Braken Bat Cave meshweaver (*Cicurina venii*), an arachnid, from the Federal List of Endangered and Threatened Wildlife (*i.e.,* ''delist'' the species) under the Endangered Species Act of 1973, as amended (Act), because of a taxonomic revision. The proposed delisting is based on our evaluation of the best available scientific and commercial information, which indicates that Braken Bat Cave meshweaver is not a discrete taxonomic entity and does not meet the definition of a species as defined by the Act. *Cicurina venii* has been synonymized with *Cicurina madla,* the Madla Cave meshweaver. Therefore, due to a taxonomic revision, *C. venii* is no longer a scientifically accepted species and cannot be listed under the Act. However, because the Braken Bat Cave meshweaver has been synonymized under the Madla Cave meshweaver, its status, and thus its protections under the Act, would remain the same because the Madla Cave meshweaver is listed as endangered under the Act.

DATES: We will accept comments received or postmarked on or before November 29, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 15, 2021.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal:

https://www.regulations.gov. In the Search box, enter FWS–R2–ES–2021–0054, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2021–0054, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Document availability: This proposed rule and supporting documents including the 5-year review and the Recovery Plan are available at *https://www.fws.gov/southwest/es/AustinTexas/,* at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2021–0054, and at the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, 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:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons we should or should not remove the Braken Bat Cave meshweaver from the List of Endangered and Threatened Wildlife.

(2) New information on the historical and current status, range, distribution, and population size of the Braken Bat Cave meshweaver.

(3) Additional taxonomic or other relevant data concerning the Braken Bat Cave meshweaver.

Please include sufficient information with your submission (such as scientific

journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the Braken Bat Cave meshweaver (*Cicurina venii*) should remain listed as endangered, if the best available information regarding its validity as a taxon changes before our final determination.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270) and our August 22, 2016, Director's Memorandum ''Peer Review Process,'' we will seek the expert opinion of at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will ensure that the opinions of peer reviewers are objective and unbiased by following the guidelines set forth in the Director's Memo, which updates and clarifies Service policy on peer review (U.S. Fish and Wildlife Service 2016). The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, our final decision may differ from this proposal.

Previous Federal Actions

On December 26, 2000, we published a final rule listing the nine Bexar County karst invertebrates, including Braken Bat Cave meshweaver, as endangered species (65 FR 81419). On April 8, 2003, we designated 1,063 acres (431 hectares) in 22 units as critical habitat for the nine karst invertebrates (68 FR 17156). Of this, one unit (Unit 15) on 217 acres (88 hectares) in western Bexar County, Texas was designated as critical habitat for the Braken Bat Cave meshweaver. Following litigation (*CBD* v. *FWS,* case number 1:09–cv–00031–LY), we entered into a settlement agreement to revise the critical habitat designation. On February 14, 2012, we finalized a critical habitat determination (77 FR 8450), designating in one unit (Unit 15) on 217 acres (88 hectares) in western Bexar County, Texas as critical habitat for the Braken Bat Cave meshweaver.

We completed a recovery plan for the Bexar County karst invertebrates, including the Braken Bat Cave meshweaver, on September 12, 2011 (Service 2011a). Our most recent 5-year review for the Madla Cave meshweaver (Service 2019) discusses the synonymization of the Braken Bat Cave meshweaver with the Madla Cave meshweaver.

Background

Species Information and Biology

The Braken Bat Cave meshweaver is a small, troglobitic (cave-dwelling) spider that inhabits caves and mesocaverns (humanly impassable voids in karst limestone) in Bexar County, Texas. Because the species is restricted to the subterranean environment, individuals exhibit morphological adaptations to that environment, such as elongated appendages and loss or reduction of eyes and pigment (Service 2011b, p. 2).

Habitat and Distribution

Habitat for the Braken Bat Cave meshweaver includes karst-forming rock containing subterranean spaces (caves and connected mesocaverns) with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks for foraging and sheltering) that are free of contaminants (Service 2011b, p. 2). Although this species spends its entire life underground, its ecosystem is dependent on the overlying surface habitat (Service 2011b, p. 2). Examples of nutrient sources include leaf litter that has fallen or washed in, animal droppings, and animal carcasses. Individuals require surface and subsurface sources (such as plants and their roots, fruits, and leaves, and animal (*e.g.,* cave cricket) eggs, feces, and carcasses) that provide nutrient input into the karst ecosystem (Service 2011a, p. 6).

The Braken Bat Cave meshweaver is known from only two caves in the Culebra Anticline karst fauna region. One is located on private property, and the other occurs on a highway right-of-way. The species was first collected in 1980 and 1983 in Braken Bat Cave, but the cave itself was not initially described until 1988 (Reddell 1993, entire). The cave entrance was filled during construction of a home in 1990. Without excavation, it is difficult to determine what effect this incident had on the species; however, there may still be some nutrient input, from a reported small side passage. The remaining location was discovered in 2012, during construction of State Highway 151 in San Antonio, Texas. Originally a void with no entrance, that feature was capped with concrete and the soil and vegetation above it was restored to the extent possible.

Threats to the species and its habitat include destruction and/or deterioration of habitat by construction; filling of caves and karst features; increase of impermeable cover; contamination from

septic effluent, sewer leaks, run-off, pesticides, and other sources; predation by and competition with nonnative fire ants; and vandalism (65 FR 81419; December 26, 2000).

Taxonomy

Spider taxonomy generally relies largely on genitalic differences in adult specimens to delimit species (Paquin and Hedin 2004, p. 3240; Paquin *et al.* 2008, p. 139; Paquin and Dupérré 2009, p. 5). Delimiting troglobitic *Cicurina* species in particular is difficult not only because of the inaccessibility of their habitat for gathering adequate samples (Moseley 2009, pp. 47–48), but because most collections return immature specimens (Gertsch 1992, p. 80; Cokendolpher 2004, p. 15; Paquin and Hedin, 2004, p. 3240; Paquin *et al.* 2008, p. 140; Paquin and Dupérré 2009, p. 5). In addition, the few adults that are collected are disproportionately female (Cokendolpher 2004, pp. 14, 15, 17–18; Paquin and Dupérré 2009, p. 5). As females of troglobitic *Cicurina* exhibit variability in genitalic characters within and between caves, this makes it difficult to determine whether an individual represents a distinct species or intraspecific variation based on morphology alone (Cokendolpher 2004a, pp. 30–32; Paquin and Duperre 2009, pp. 5–6; Paquin *et al.* 2008, pp. 140, 143, 147; Paquin and Dupérré 2009, pp. 4–6, 63–64).

The Braken Bat Cave meshweaver and Madla Cave meshweaver were originally described in 1992, from single female specimens found in Braken Bat Cave and Madla's Cave, respectively (Gertsch 1992, pp. 109, 111). These species were two of only four cave-dwelling spiders of the genus *Cicurina* described from Bexar County at the time (Gertsch 1992, p. 98) and were differentiated based on their geographic location and specific morphological characters of the females (Gertsch 1992, pp. 84, 109, 111; Cokendolpher 2004, pp. 26, 43, 52).

Various genetic data were combined to address species delimitation questions in troglobitic *Cicurina* species, including the Braken Bat Cave meshweaver (Hedin *et al.* 2018, entire). Analysis of the evolutionary history of the species using genetics (phylogenomics) revealed two lines of ancestry, both of which are eyeless and correspond to groups previously described based on female morphology and troglobitic (cave-dwelling) adaptations, specifically the shape of the female sperm storage organ and the ratio of leg length to body length (Hedin *et al.* 2018, pp. 55, 61, 63–64; Cokendolpher 2004, p. 18; Paquin and Dupérré 2009, p. 9). Although the type specimen for the Braken Bat Cave meshweaver was not included in the genetics portion of the study because DNA could not be collected due to age, newly discovered specimens from the same geographic region with similar morphology to the Braken Bat Cave meshweaver placed it in the Madla Cave meshweaver clade genetically (Hedin *et al.* 2018, pp. 56–57; Hedin *et al.* 2018, p. 67).

Therefore, based on similarity of morphologic characteristics and mitochondrial and nuclear DNA results, Braken Bat Cave meshweaver was synonomized under Madla Cave meshweaver (Hedin *et al.* 2018, p. 68). This synonomy was accepted by the World Spider Catalog (World Spider Catalog 2019). Please refer to the Bexar County Karst Invertebrates Recovery Plan (2011), the Bexar County Karst Invertebrates 5-year Review (2011), and the Madla Cave Meshweaver 5-year Review (2019) for more information.

Delisting Proposal

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for listing species on, reclassifying species on, or removing species from the Federal Lists of Endangered and Threatened Wildlife and Plants. The Act defines ''species'' as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). We may delist a species according to 50 CFR 424.11(e) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; or (3) the listed entity does not meet the statutory definition of a species. For the Braken Bat Cave meshweaver, we conclude that the existing scientific information demonstrates that Braken Bat Cave meshweaver is not a discrete taxonomic entity and, therefore, does not meet the Act's definition of ''species'' (16 U.S.C. 1532(16)). Therefore, we propose to delist the Braken Bat Cave meshweaver. The Braken Bat Cave meshweaver does not require a post-delisting monitoring (PDM) plan because the monitoring plan does not apply to delisting species due to taxonomic change.

Effects of This Proposed Rule

This proposal, if made final, would revise 50 CFR 17.11(h) by removing the Braken Bat Cave meshweaver from the Federal List of Endangered and Threatened Wildlife. However, because the Braken Bat Cave meshweaver has been synonymized under the Madla Cave meshweaver, its status, and thus its protections under the Act, would remain the same because the Madla Cave meshweaver is listed as endangered under the Act. This additional locality was included in the Madla Cave meshweaver 5-year review and did not change the status of the species (Service 2019, p.17).

Unit 15, the area surrounding Braken Bat Cave, was designated as critical habitat for Braken Bat Cave meshweaver in 2012. Because Braken Bat Cave meshweaver had designated critical habitat, this rule would also amend 50 CFR 17.95(g) to remove the Braken Bat Cave meshweaver's designated critical habitat. This area has not yet been evaluated to determine if it is essential to the conservation of the Madla Cave meshweaver. Should we evaluate it in the future, proposing this unit as critical habitat for Madla Cave meshweaver would be completed in a subsequent rulemaking. Unit 15, however, is also critical habitat for an endangered beetle with no common name, *Rhadine infernalis.* Therefore, if we adopt this action as proposed, Unit 15 would retain the protections of the Act as designated critical habitat for *R. infernalis.*

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with determining a species' listing status under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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 do not expect any Tribes would be affected by this proposed delisting because there are no Tribal lands in the range of the species.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for ''Meshweaver, Braken Bat Cave'' under ARACHNIDS from the List of Endangered and Threatened Wildlife.

§ 17.95 [Amended]

■ 3. In § 17.95, amend paragraph (g) by removing the entry for ''Braken Bat Cave Meshweaver (*Cicurina venii*)''.

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–20911 Filed 9–29–21; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 86, No. 187
Thursday, September 30, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology Comments regarding these information collections are best assured of having their full effect if received by November 1, 2021. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Agricultural Marketing Service

Title: Accounts Payable Information Request.

OMB Control Number: 0581–New.

Summary of Collection: The Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621–1627) directs and authorizes USDA to develop and improve standards of quality, grades, grading programs, and certification services which facilitate the marketing of agricultural products. To provide programs and services, section 203(h) of the AMA (7 U.S.C. 1622(h)) directs and authorizes the Secretary of Agriculture (Secretary) to inspect, certify, and identify the class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of service. The regulations in 7 CFR 54, 56, and 70 provide a voluntary program for grading, certification and standards of meats, prepared meats, meat products, shell eggs, poultry products, and rabbit products. The regulation in 7 CFR 62—Quality Systems Verification Programs provides for voluntary, audit-based, user-fee funded programs that allow applicants to have program documentation and program processes assessed by AMS auditor(s) and other USDA officials.

AMS also provides other types of voluntary services under these regulations, including contract and specification acceptance services and verification of product, processing, further processing, temperature, and quantity. Because this is a voluntary program, respondents request or apply for the specific service they wish, and in doing so, they provide information.

To assist AMS billing administration for providing voluntary services, AMS intends to create a new form to request respondents accounts payable contact information. The new form, LP–109A: Accounts Payable Information Request will increase accuracy and efficiency in billing administration by having the applicable contact responsible for receiving billing statements and submitting payment for services rendered.

Need and Use of the Information: The information collected is used only by authorized representatives of USDA AMS, Livestock and Poultry Program's QAD national and field staff and is used to administer services requested by respondents. The information collection requirements in this request are essential to carry out the intent of AMA, to provide the respondents the type of service they request, and to administer the program.

Description of Respondents: Individuals or Households.

Number of Respondents: 164.

Frequency of Responses: Annually.

Total Burden Hours: 40.

Dated: September 27, 2021.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–21310 Filed 9–29–21; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[Docket ID: USDA–2021–0010]

Climate-Smart Agriculture and Forestry Partnership Program

AGENCY: Commodity Credit Corporation, Farm Production and Conservation Mission Area, Office of Chief Economist, and Department of Agriculture (USDA).

ACTION: Request for information.

SUMMARY: As part of our (USDA) broader efforts on climate change, we are requesting information (comments) from the public on a Climate-Smart Agriculture and Forestry Partnership Program. In response to the Executive Order titled Tackling the Climate Crisis at Home and Abroad, we published a **Federal Register** notice on March 16, 2021, to request comments on a Climate-Smart Agriculture and Forestry (CSAF) strategy. Based on public comments received and our ongoing stakeholder engagement activities, we published a progress report in May 2021 on the CSAF strategy. As one element of the CSAF strategy, we are considering actions to expand the use of climate-smart farming practices and aid in the marketing of agricultural commodities. The term ''climate-smart commodity'' is used to refer to an agricultural commodity that is produced using farming practices that reduce greenhouse gas (GHG) emissions or

sequester carbon. This requested information is intended to help test development of a Climate-Smart Agriculture and Forestry Partnership Program that could encourage adoption of CSAF practices and promote markets for climate-smart commodities. The Climate-Smart Agriculture and Forestry Partnership Program could be developed under the authority of the Commodity Credit Corporation Charter Act of 1933. This document requests comments on priorities and program design of the Climate-Smart Agriculture and Forestry Partnership Program that would facilitate the expansion of markets for agricultural commodities.

DATES: We will consider comments received on or before 11:59 p.m. (ET) on November 1, 2021.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by going to *http://www.regulations.gov* and searching for Docket ID: USDA–2021–0010. Follow the online instructions for submitting comments.

Instructions for submitting comments are provided in the Written Comments section below.

Comments will be available for inspection online at *https://www.regulations.gov.*

If you have questions, email them to: *ccpooce@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

In response to Executive Order 14008, dated January 27, 2021, and titled, Tackling the Climate Crisis at Home and Abroad, we published a **Federal Register** notice on March 16, 2021 (86 FR 14403–14404), to request comments on a CSAF strategy. Based on public comments received and our ongoing stakeholder engagement activities, we published a progress report on the CSAF strategy.[1] As one element of this strategy, we are considering actions to expand the use of climate-smart farming practices and aid in the marketing of agricultural commodities. The term ''climate-smart commodity'' is used to refer to an agricultural commodity that is produced using farming practices that reduce GHG emissions or sequester carbon.

We will use the public comments to inform the possible development of a USDA Climate-Smart Agriculture and Forestry Partnership Program, which could encourage adoption of CSAF practices and promote markets for climate-smart commodities. Through this request for information, we are requesting suggestions for priorities within the Climate-Smart Agriculture and Forestry Partnership Program. The Climate-Smart Agriculture and Forestry Partnership Program could be developed under the authority of the Commodity Credit Corporation Charter Act of 1933 (15 U.S.C. 714 Section 5(e).

The public comments will provide valuable information to USDA, as well as the private sector and other stakeholders with interest in and expertise relating to the expansion of opportunities for CSAF practices, as well as markets for climate-smart commodities.

New markets for climate-smart commodities provide an opportunity and a challenge for U.S. farmers, ranchers, and forest landowners. Domestic and international consumers are demonstrating a preference for agricultural commodities produced using CSAF practices, creating new market opportunities for producers. Markets for climate-smart commodities include sustainable supply chain initiatives and internal corporate commitments where companies are pledging to reduce emissions within their own supply chains and production facilities. Opportunities also include markets for low-carbon biofuels and renewable energy. Agricultural producers and landowners also have opportunities to market GHG reductions generated as a part of climate-smart commodity production.

Despite the opportunity for new or expanded markets for climate-smart commodities described above, there are barriers that have prevented these markets from reaching scale. The barriers include:

- The lack of standard definitions of climate-smart commodities;
- Lack of clear standards for measurement of climate benefits of CSAF practices;
- Potential for double-counting benefits;
- High transaction costs;
- Limited ability for small producer participation;
- Lack of efficient supply chain traceability; and
- High risk of market entry.

We are exploring options to reduce and remove barriers currently limiting the development of new market opportunities for CSAF practices and climate-smart commodities. USDA is requesting comments on options for promoting CSAF, including systems for quantification, options, and criteria for proposal evaluation, use of information collected, potential protocols, and options for review and verification. Additionally, we are requesting comments on how U.S. Government action might encourage CSAF practices by leveraging private-sector demand and providing new income streams for farmers, ranchers, and forest landowners.

We are requesting comments from the public, including, but not limited to, comments from:

1. Farmers and farmer organizations;
2. Commodity groups;
3. Livestock producer groups;
4. Environmental organizations;
5. Agriculture businesses and technology companies;
6. Environmental market organizations;
7. Renewable energy organizations;
8. Tribal organizations and governments;
9. Organizations representing historically underrepresented producers;
10. Organizations representing historically underrepresented communities, local producers, and micro-producers;
11. Forest landowners and forest landowner organizations; and
12. Private corporations.

Written Comments

Written comments should not exceed 10 pages, inclusive of a 1-page cover page as described below. Attachments or linked resources or documents are not included in the 10-page limit. Please write concisely, in plain language, and in narrative format. You may respond to some or all of the questions listed in this document. Please note the question to which you are responding in your comment. You may also include links to online material or interactive presentations but please ensure all links are publicly available. Each comment should include:

- The name of the individual(s) and organization submitting the comment.
- The question(s) (1, 2, 3, 4, 5, 6, or 7) that your comment supports.
- A brief description of the commenter's (individual(s) or organization's) mission or areas of expertise, including any public-private partnerships with Federal, State, tribal, territorial, or local governments within the past 3 years that are relevant to this document; and
- A contact for questions or other follow-up on your comment.

By commenting in response to this document, each participant (individual, team, or legal entity) warrants that they are the sole author or owner of, or has the right to use, any copyrightable works that are included in the comment,

[1] The progress report is available at the following link: *https://www.usda.gov/sites/default/files/documents/climate-smart-ag-forestry-strategy-90-day-progress-report.pdf.*

that the works are wholly original (or is an improved version of an existing work that the participant has sufficient rights to use and improve), and that the comment does not infringe any copyright or any other rights of any third party of which the participant is aware.

Participants will not be required to transfer their intellectual property rights to USDA, but by providing the comment, the participant(s) grants to the Federal government a nonexclusive license to apply, share, and use the materials that are included in the comment. By providing the comment to the Federal government, each participant must warrant that there are no legal obstacles to providing the above-referenced nonexclusive licenses of participant's rights to the Federal government.

Interested parties who comment in response to this document may be contacted for a follow-up strategic agency assessment dialogue, discussion, event, crowdsource campaign, or competition.

Questions

We are requesting comments relating to the following questions:

1. How would existing private sector and state compliance markets for carbon offsets be impacted from this potential federal program?

2. In order to expand markets, what should the scope of the Climate-Smart Agriculture and Forestry Partnership Program be, including in terms of geography, scale, project focus, and project activities supported?

3. In order to expand markets, what types of CSAF project activities should be eligible for funding through the Climate-Smart Agriculture and Forestry Partnership Program? Projects should promote the production of climate-smart commodities and support adoption of CSAF practices. Examples may include:

a. Activities that develop standardized supply chain accounting for carbon-friendly products; activities that provide supply chain traceability; innovative financing for low-carbon fuel from agricultural feedstocks; or green labeling efforts, among others;

b. Activities that supply grants, loans, and loan guarantees to producers for equipment needed to implement CSAF practices, or for capital-intensive CSAF technologies;

c. Activities that test and evaluate standardized protocols that define eligible CSAF practices, quantification methodologies, and verification requirements, with an emphasis on minimizing transaction costs and operating at scale;

d. Activities that evaluate options for tracking climate-smart commodities, including book-and-claim systems and systems to record and register the GHG benefits generated through CSAF practices;

e. Activities that generate voluntary carbon offsets through CSAF practices. Within carbon offset markets, the GHG benefit is separated from the commodity and sold as a carbon offset credit. Should the USDA consider hybrid approaches where the GHG benefit could be assigned to a climate-smart commodity, or separated and sold as a voluntary carbon offset?

4. In order to expand markets, what entities should be eligible to apply for funding through the Climate-Smart Agriculture and Forestry Partnership Program? Given that the administrative costs of the Climate-Smart Agriculture and Forestry Partnership Program could be high if USDA were to contract with individual producers or landowners, it makes more sense to work with groups of producers and landowners. For example, eligible entities may include an agricultural producer association or other group of producers; State, Tribe, or unit of local government; a farmer cooperative; a carbon offset project developer; an organization or entity with an established history of working cooperatively with producers on agricultural land, as determined by USDA (for example, a non-governmental organization); a conservation district; and an institution of higher education, including cooperative extension;

5. In order to expand markets, what criteria should be used to evaluate project proposals for receiving funding through the Climate-Smart Agriculture and Forestry Partnership Program?

a. For example, potential criteria may include estimated GHG or carbon sequestration benefits; estimated costs; potential for addressing identified barriers for producers; ability to benefit underserved producers and early adopters; environmental justice benefits; and demonstrated capability to ensure success.

b. Should USDA establish a consistent payment per ton of GHG generated through these partnership projects as part of the project payment structure, or evaluate a range of incentive options?

6. In order to expand markets, which CSAF practices should be eligible for inclusion?

a. What systems for quantification and key metrics should be used to assess the benefits of projects funded through the Climate-Smart Agriculture and Forestry Partnership Program?

b. What should the quantification, monitoring, reporting, and verification requirements for projects funded through the Climate-Smart Agriculture and Forestry Partnership Program be?

c. What types of systems should be used or supported to track participation, implementation, and potential benefits generated?

d. What types of data and metrics should be collected and reported to determine project success and GHG benefits delivered? How should the data and metrics be analyzed to inform future decisions?

7. How should ownership of potential GHG benefits that may be generated be managed?

8. How can USDA ensure that partnership projects are equitable and strive to include a wide range of landowners and producers?

a. How can the Climate-Smart Agriculture and Forestry Partnership Program include early adopters of CSAF practices?

b. How can the Climate-Smart Agriculture and Forestry Partnership Program be designed to ensure that benefits flow to historically underserved producers?

c. How can the Climate-Smart Agriculture and Forestry Partnership Program be designed to ensure that benefits flow to historically underserved communities?

d. How can the Climate-Smart Agriculture and Forestry Partnership Program be designed to ensure that benefits are provided to producers?

USDA Non-Discrimination Policy

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

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or USDA TARGET Center at (202) 720–2600 or 844–433–2774 (toll-free nationwide). Additionally, program information may

be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA, and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

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Robert Ibarra,

Commodity Credit Corporation, United States Department of Agriculture.

[FR Doc. 2021–21368 Filed 9–29–21; 8:45 am]

BILLING CODE 3410–GL–P

DEPARTMENT OF COMMERCE

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA), Commerce.

ACTION: Publishing the new 12-month cap on duty- and quota-free benefits.

DATES: *Effective Date:* The new limitations become effective October 1, 2021.

FOR FURTHER INFORMATION CONTACT: Thomas Newberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 510–3982 *thomas.newberg@trade.gov.*

SUPPLEMENTARY INFORMATION: *Authority:* Title I, Section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Public Law (P.L.) 106–200, as amended by Division B, Title XXI, section 3108 of the Trade Act of 2002, P.L. 107–210; Section 7(b)(2) of the AGOA Acceleration Act of 2004, P.L. 108–274; Division D, Title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), P.L. 109–432, and section 1 of The African Growth and Opportunity Amendments (P.L. 112–163), August 10, 2012; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459); and Title I, Section 103(b)(2) and (3) of the Trade Preferences Extension Act of 2015, P.L. 114–27, June 29, 2015.

Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating in the United States or one or more beneficiary sub-Saharan African countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. P.L. 114–27 extended this special rule for lesser-developed countries through September 30, 2025.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the 12-month period beginning October 1, 2021 will be an amount not to exceed seven percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* Section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* Section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by Section 6002(a)(3) of TRHCA 2006. The Annex to Presidential Proclamation 7350 of October 2, 2000 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**.

For the one-year period, beginning on October 1, 2021, and extending through September 30, 2022, the aggregate quantity of imports eligible for preferential treatment under these provisions is 2,066,936,295 square meters equivalent. Of this amount, 1,033,468,148 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Dated: September 27, 2021.

Paul E. Morris,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2021–21314 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–850]

Thermal Paper From Germany: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that thermal paper from Germany is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is October 1, 2019, through September 30, 2020.

DATES: Applicable September 30, 2021.

FOR FURTHER INFORMATION CONTACT: David Goldberger, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2021, Commerce published in the **Federal Register** the preliminary affirmative determination in the LTFV investigation of thermal paper from Germany, in which we also postponed the final determination until September 24, 2021.[1] Commerce invited

[1] *See Thermal Paper from Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional* Measures, 86 FR 26001 (May 12, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM)*; see also Thermal*

interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum.[2]

Scope of the Investigation

The product covered by this investigation is thermal paper from Germany. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On May 5, 2021, Commerce issued the Preliminary Scope Decision Memorandum.[3] We received comments from interested parties regarding the Preliminary Scope Decision Memorandum, which we addressed in the Final General Scope Decision Memorandum, and Final Germany Scope Decision Memorandum.[4] Commerce made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn.*

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[5]

Changes Since Preliminary Determination

Based on our analysis of the comments received, we made certain changes to Papierfabrik August Koehler SE (Koehler)'s margin calculations. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

Final Affirmative Determination of Critical Circumstances, in Part

Consistent with the *Preliminary Determination,* Commerce continues to determine that critical circumstances exist within the meaning of section 735(e) of the Act and 19 CFR 351.206 for Koehler, but not the companies covered by the all-others rate. For a discussion of the issues raised regarding Commerce's affirmative critical circumstances determination, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Koehler, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Koehler is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Determination

Pursuant to section 735 of the Act, the final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Papierfabrik August Koehler SE	2.90
All Others	2.90

Disclosure

We intend to disclose the calculations performed in this final determination within five days of any public announcement, or if there is no public announcement, within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of all entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after May 12, 2021, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.* Further, in accordance with section 733(e)(2)(A) of the Act, Commerce will instruct CBP to continue the suspension of liquidation of entries of subject merchandise, as described in Appendix I, produced and/or exported by Koehler which entered, or were withdrawn from warehouse, for consumption on or after February 11, 2021, which is 90 days before the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin, as follows: (1) The

Paper from Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances in Part, Postponement of Final Determination, and Extension of Provisional Measures; Correction, 86 FR 26905 (May 18, 2021) (correcting the suspension of liquidation instructions in the *Preliminary Determination*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Thermal Paper from Germany,'' dated concurrently with, and herby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Preliminary Scope Decision,'' dated May 5, 2021 (Preliminary Scope Decision Memorandum).

[4] *See* Memorandum, ''Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Final Decision on General Scope Issues: Final Decision on General Scope Issues,'' dated concurrently with, and hereby adopted by, this notice (Final General Scope Decision Memorandum); and Memorandum, ''Thermal Paper from Germany: Final Scope Decision,'' dated concurrently with, and hereby adopted by, this notice (Final Germany Scope Decision Memorandum).

[5] *See* Commerce's Letter, In-Lieu of Verification Questionnaire to Koehler, dated July 1, 2021; Commerce's Letter, In-Lieu of Verification Questionnaire to Matra Americas, LLC (Matra), dated July 6, 2021; Koehler's Letter, ''Koehler's In Lieu of On-site Verification Questionnaire Response,'' dated July 13, 2021; and Matra's Letter, ''Matra's In Lieu of Onsite Verification Questionnaire Response,'' dated July 14, 2021.

cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of this final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of thermal paper from Germany no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, all cash deposits posted will be refunded, and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as a final reminder to the parties subject to administrative protection 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 or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: September 24, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers thermal paper in the form of ''jumbo rolls'' and certain ''converted rolls.'' The scope covers jumbo rolls and converted rolls of thermal paper with or without a base coat (typically made of clay, latex, and/or plastic pigments, and/or like materials) on one or both sides; with thermal active coating(s) (typically made of sensitizer, dye, and co-reactant, and/or like materials) on one or both sides; with or without a top coat (typically made of pigments, polyvinyl alcohol, and/or like materials), and without an adhesive backing. Jumbo rolls are defined as rolls with an actual width of 4.5 inches or more, an actual weight of 65 pounds or more, and an actual diameter of 20 inches or more (jumbo rolls). All jumbo rolls are included in the scope regardless of the basis weight of the paper. Also included in the scope are ''converted rolls'' with an actual width of less than 4.5 inches, and with an actual basis weight of 70 grams per square meter (gsm) or less.

The scope of this investigation covers thermal paper that is converted into rolls with an actual width of less than 4.5 inches and with an actual basis weight of 70 gsm or less in third countries from jumbo rolls produced in the subject countries.

The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 4811.90.8030 and 4811.90.9030. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Sections Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–21301 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–911]

Thermal Paper From the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that thermal paper from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation, October 1, 2019, through September 30, 2020.

DATES: Applicable September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Kristen Ju or Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3699 or (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2021, Commerce published in the **Federal Register** the preliminary affirmative determination in the LTFV investigation of thermal paper from Korea, in which it postponed the final determination until September 24, 2021.[1] In response to Commerce's invitation to comment on the *Preliminary Determination,* certain interested parties filed case and rebuttal briefs. A summary of the events that

[1] *See Thermal Paper from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 26007 (May 12, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum.[2]

Scope of the Investigation

The product covered by this investigation is thermal paper from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On May 5, 2021, Commerce issued the Preliminary Scope Decision Memorandum.[3] We received scope comments from interested parties, which we addressed in the Final Scope Decision Memorandum.[4] Commerce did not modify the scope of this investigation since the *Preliminary Determination.*

Analysis of Comments Received

We addressed all of the issues that were raised by interested parties in their case and rebuttal briefs in the Issues and Decision Memorandum. A list of the sections in the Issues and Decision Memorandum is in Appendix II of 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 at *http://enforcement.trade.gov/frn.*

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in the investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[5]

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we made certain changes to our calculation of Hansol Paper Company (Hansol Paper)'s dumping margin. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Affirmative Determination of Critical Circumstances

Consistent with the *Preliminary Determination,* Commerce continues to determine that critical circumstances exist with respect to Hansol Paper and all other companies in Korea within the meaning of section 733(e) of the Act and 19 CFR 351.206. For a further discussion of our critical circumstances analysis, *see* Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding dumping margins that are zero, *de minimis,* or determined entirely under section 776 of the Act (facts available). Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all of the exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters not individually investigated.

The final dumping margin that we calculated for the sole mandatory respondent, Hansol Paper, is not zero, *de minimis,* or determined entirely under section 776 of the Act. Therefore, we assigned the weighted-average dumping margin that we calculated for Hansol Paper to all other companies in Korea which we did not individually investigate.

Final Determination

Pursuant to section 735 of the Act, the final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Hansol Paper Company	6.19
All Others	6.19

Disclosure

We intend to disclose to parties to the proceeding the calculations that we performed in this final determination within five days after the date of public announcement of the determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Section 735(c)(4) of the Act provides that if there is an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which the notice of initiation of the investigation was published in the **Federal Register**. As noted above, Commerce has continued to find that critical circumstances exist for imports of subject merchandise produced and/or exported by Hansol Paper and all other producers and exporters in Korea. Therefore, in accordance with section 735(c)(4) of the Act, suspension of liquidation shall continue to apply to unliquidated entries of subject merchandise produced and/or exported by Hansol Paper and all other producers and exporters in Korea that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date of publication of the *Preliminary Determination* in the **Federal Register**. Consequently, in accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of thermal paper from Korea, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after February 11, 2021, which is 90 days before the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the following amounts: (1) The cash

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Thermal Paper from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Preliminary Scope Decision,'' dated May 5, 2021 (Preliminary Scope Decision Memorandum).

[4] *See* Memorandum, ''Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Final Decision on General Scope Issues,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

[5] *See* In-Lieu of On-Site Verification Questionnaire, dated June 15, 2021; *see also* Reissuance of Item 12d of the In-Lieu of On-Site Verification Questionnaire, dated June 17, 2021.

deposit rate for Hansol Paper is equal to the company-specific estimated weighted-average dumping margin listed for Hansol Paper in the table in the ''Final Determination'' section of this notice; (2) if the exporter is not identified in the table in the ''Final Determination'' section of this notice, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin for the producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters in Korea is equal to the all-others estimated weighted-average dumping margin listed in the table in the ''Final Determination'' section of this notice.

These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of this final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of thermal paper from Korea no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, all cash deposits posted will be refunded, and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction from Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section of this notice.

Notification Regarding Administrative Protective Order

This notice will serve as a final reminder to the parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: September 24, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers thermal paper in the form of ''jumbo rolls'' and certain ''converted rolls.'' The scope covers jumbo rolls and converted rolls of thermal paper with or without a base coat (typically made of clay, latex, and/or plastic pigments, and/or like materials) on one or both sides; with thermal active coating(s) (typically made of sensitizer, dye, and co-reactant, and/or like materials) on one or both sides; with or without a top coat (typically made of pigments, polyvinyl alcohol, and/or like materials), and without an adhesive backing. Jumbo rolls are defined as rolls with an actual width of 4.5 inches or more, an actual weight of 65 pounds or more, and an actual diameter of 20 inches or more (jumbo rolls). All jumbo rolls are included in the scope regardless of the basis weight of the paper. Also included in the scope are ''converted rolls'' with an actual width of less than 4.5 inches, and with an actual basis weight of 70 grams per square meter (gsm) or less.

The scope of this investigation covers thermal paper that is converted into rolls with an actual width of less than 4.5 inches and with an actual basis weight of 70 gsm or less in third countries from jumbo rolls produced in the subject countries.

The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 4811.90.8030 and 4811.90.9030. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Sections in the Issues and Decision Memorandum

[FR Doc. 2021–21303 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Notice of Court Decision Not in Harmony With the Results of Antidumping Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 20, 2021, the U.S. Court of International Trade (CIT or the Court) issued its final judgment in *Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co.* v. *United States,* Court No. 19–00201, sustaining the Department of Commerce (Commerce)'s remand results pertaining to the administrative review of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from India covering the period February 1, 2017, through January 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review and that Commerce is amending the final results with respect to the dumping margin assigned to Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co. (collectively, the Elque Group).

DATES: Applicable September 30, 2021.

FOR FURTHER INFORMATION CONTACT: David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3693.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2019, Commerce published its *Final Results.*[1] During the course of the administrative review, Commerce found that the Elque Group reported unclear and inconsistent product specification data and failed to respond adequately to certain questions contained in the original and supplemental questionnaires issued by Commerce. As a result, Commerce was not able to rely on the Elque Group's data as reported in order to calculate a

[1] *See Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 57847 (October 29, 2019) (*Final Results*).

dumping margin for the Elque Group. Commerce determined that the Elque Group: (1) Withheld requested information; (2) failed to provide information in the form or manner requested by Commerce; and (3) significantly impeded the proceeding.[2] For these reasons, in determining the Elque Group's dumping margin, Commerce applied adverse facts available (AFA), pursuant to section 776(b) of the Tariff Act of 1930, as amended (the Act).[3]

On February 3, 2021, the Court remanded aspects of the *Final Results* to Commerce for further consideration. Specifically, the Court held that Commerce's application of AFA to the Elque Group was unlawful because Commerce did not provide the Elque Group adequate assistance or consider its difficulties as a small company, as required by section 782(c) of the Act. In its decision, the Court remanded the *Final Results* to Commerce to recalculate the Elque Group's dumping margin, by either: (1) Reopening the record and procuring additional information; or (2) applying neutral facts available. In the Remand Redetermination, Commerce applied neutral facts available to the Elque Group's reported data to calculate a dumping margin.[4] On September 20, 2021, the CIT sustained Commerce's Remand Redetermination.[5]

Timken Notice

In its decision in *Timken,*[6] as clarified by *Diamond Sawblades,*[7] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's September 20, 2021 judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to the Elque Group and the non-examined companies subject to the review as follows:

Producer/exporter	Weighted-average dumping margin (percent)
Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co	27.66
Review-Specific Average Rate Applicable to the Following Companies[8]	
Blue-Fin Frozen Foods Pvt. Ltd.	6.13
Crystal Sea Foods Private Limited	6.13
Forstar Frozen Foods Pvt. Ltd	6.13
Milsha Agro Exports Pvt. Ltd	6.13

Cash Deposit Requirements

Because Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co., Blue-Fin Frozen Foods Pvt. Ltd., Crystal Sea Foods Private Limited, and Forstar Frozen Foods Pvt. Ltd. have a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate with respect to these companies.

With respect to Milsha Agro Exports Pvt. Ltd., Commerce will issue revised cash deposit instructions to CBP.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and/or exported by Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co. and were entered, or withdrawn from warehouse, for consumption during the period February 1, 2017, through January 31, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event that the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co. in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[9] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: September 24, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–21256 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–880]

Thermal Paper From Japan: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) determines that thermal paper from Japan is being, or is likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation, October 1, 2019, through September 30, 2020.

DATES: Applicable September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Alex Wood or Paul Litwin, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1959 or (202) 482–6002, respectively.

SUPPLEMENTARY INFORMATION:

[2] *See Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 16843 (April 23, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM) at 11, unchanged in the *Final Results.*

[3] *See Preliminary Results* PDM at 13, unchanged in the *Final Results.*

[4] *See* Final Results of Redetermination on Remand Pursuant to *Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co.* v. *United States,* Court No. 19–00201, Slip. Op. 21–11 (CIT February 3, 2021), dated May 4, 2021 (Remand Redetermination).

[5] *See Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co.* v. *United States,* Court No. 19–00201, Slip Op. 21–123 (CIT September 20, 2021).

[6] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[7] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[8] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act. *See also* Memorandum, ''Remand Redetermination of the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Calculation of the Cash Deposit Rate for Non-Reviewed Companies,'' dated April 21, 2021; and *Final Results,* 84 FR at 57847.

[9] *See* 19 CFR 351.106(c)(2).

Background

On May 12, 2021, Commerce published in the **Federal Register** the preliminary affirmative determination in the LTFV investigation of thermal paper from Japan, in which we also postponed the final determination until September 24, 2021.[1] Commerce invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum.[2]

Scope of the Investigation

The product covered by this investigation is thermal paper from Japan. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On May 5, 2021, Commerce issued the Preliminary Scope Decision Memorandum.[3] We received comments from interested parties with regard to the Preliminary Scope Decision Memorandum, which we addressed in the Final General Scope Decision Memorandum, and Final Japan Scope Decision Memorandum.[4] Commerce has made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Comments Received

On June 24, 2021, the petitioners [5] filed a case brief. No other interested party submitted a case or rebuttal brief. All issues raised in the petitioners' case brief are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn.*

Methodology—Adverse Facts Available

Prior to verification, Nippon Paper Industries, Co., Ltd. (NPI), the sole mandatory respondent in this investigation, informed Commerce that it was withdrawing its participation from this investigation.[6] Thus, we determine that NPI's data cannot serve as a reliable basis for our *Final Determination* because NPI's data could not be verified. We further determine that NPI significantly impeded the investigation and did not act to the best of its ability to comply with our requests for information. Therefore, we find it appropriate to apply a dumping margin based on adverse facts available (AFA) to NPI, in accordance with sections 776(a) and (b) of the Act. For further discussion, *see* the Issues and Decision Memorandum.

Verification

As noted above, NPI withdrew its participation from this investigation prior to verification. Accordingly, Commerce was unable to conduct verification pursuant to section 782(i)(1) of the Act.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

Commerce has determined the estimated weighted-average dumping margin for the sole individually-examined respondent entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, Commerce's practice under these circumstances has been to assign, as the all-others rate, a simple average of the petition rates.[7] In the Petition, the petitioners provided two dumping margins, 140.25 percent and 129.86 percent, which were each based on a price-to-constructed-value comparison.[8] Therefore, in the absence of any estimated weighted-average dumping margin on the record of this investigation that is not zero, *de minimis,* or determined entirely under section 776 of the Act, we are assigning the simple average of the two dumping margins in the Initiation Checklist, *i.e.,* 135.06 percent, as the all-others rate.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Nippon Paper Industries Co., Ltd./ Nippon Paper Papylia Co., Ltd[9]	140.25
All Others	135.06

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce applied AFA to the mandatory respondent in this investigation, NPI, in accordance with section 776 of the Act, and the AFA dumping margin is based solely on the petition, there are no calculations to disclose.

[1] *See Thermal Paper from the Republic of Japan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 26011 (May 12, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Thermal Paper from Japan,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Preliminary Scope Decision,'' dated May 5, 2021 (Preliminary Scope Decision Memorandum).

[4] *See* Memorandum, ''Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Final Decision on General Scope Issues,'' dated concurrently with, and hereby adopted by, this notice (Final General Scope Decision Memorandum); and Memorandum, ''Thermal Paper from Japan: Final Scope Decision,'' dated concurrently with, and hereby adopted by, this notice (Final Japan Scope Decision Memorandum).

[5] The petitioners are Appvion Operations, Inc., and Domtar Corporation.

[6] *See* NPI's Letter, ''NPI's Withdrawal as Mandatory Respondent,'' dated June 17, 2021.

[7] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

[8] *See Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 69580 (November 3, 2020); and Checklist, ''Thermal Paper from Japan,'' dated October 27, 2020 (Initiation Checklist) at 6–7.

[9] Commerce preliminarily determined that Nippon Paper Industries Co, Ltd., and Nippon Paper Papylia Co., Ltd. are a single entity. *See Preliminary Determination* PDM at 2.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of thermal paper from Japan, as described in Appendix I of this notice, that were entered, or withdrawn from warehouse, for consumption on or after May 12, 2021, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination*.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of this final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of thermal paper from Japan no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, all cash deposits posted will be refunded, and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Order

This notice will serve as a final reminder to the 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 or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: September 24, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers thermal paper in the form of ''jumbo rolls'' and certain ''converted rolls.'' The scope covers jumbo rolls and converted rolls of thermal paper with or without a base coat (typically made of clay, latex, and/or plastic pigments, and/or like materials) on one or both sides; with thermal active coating(s) (typically made of sensitizer, dye, and co-reactant, and/or like materials) on one or both sides; with or without a top coat (typically made of pigments, polyvinyl alcohol, and/or like materials), and without an adhesive backing. Jumbo rolls are defined as rolls with an actual width of 4.5 inches or more, an actual weight of 65 pounds or more, and an actual diameter of 20 inches or more (jumbo rolls). All jumbo rolls are included in the scope regardless of the basis weight of the paper. Also included in the scope are ''converted rolls'' with an actual width of less than 4.5 inches, and with an actual basis weight of 70 grams per square meter (gsm) or less.

The scope of this investigation covers thermal paper that is converted into rolls with an actual width of less than 4.5 inches and with an actual basis weight of 70 gsm or less in third countries from jumbo rolls produced in the subject countries.

The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 4811.90.8030 and 4811.90.9030. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Sections Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–21302 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Amendment for Certain Fall 2021 Scheduled Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, is announcing amended dates and deadlines for submitting applications for several upcoming trade missions that were previously announced and published in the **Federal Register**:

- Cybersecurity Business Development Mission to Peru, Chile, and Uruguay, with an optional stop in Argentina, scheduled for March 1–5, and 8, 2021, postponed to March 30–April 8, 2022.
- Cybersecurity Business Development Mission to India, scheduled for November 8–12, 2021, postponed to May 2–5, 2022.
- Digital Transformation Business Development Mission to the Gulf Cooperation Council (GCC) region, scheduled from October 24–28, 2021, postponed to January 23–27, 2022. The optional UAE stop was also removed from the mission schedule.
- Trade Mission to the Caribbean Region in conjunction with the Trade Americas—Business Opportunities in the Caribbean Region Conference, scheduled from October 24–28, 2021, postponed to October 23–28, 2022.

SUPPLEMENTARY INFORMATION:

Amendments to Revise Trade Mission Dates, and Deadline for Submitting Applications for Certain Fall 2021 Trade Missions.

Background

Cybersecurity Business Development Mission to Peru, Chile, and Uruguay, with an Optional Stop in Argentina

The United States Department of Commerce, International Trade Administration, is amending the Notice published at 86 FR 7705 (February 1, 2021), regarding the dates of ITA's planned Cybersecurity Business Development Mission to Peru, Chile, and Uruguay, with an optional stop in Argentina, which have been modified from October 18–22, and 25, 2021, to March 30–April 8, 2022. The Department has been closely monitoring COVID–19 developments and has determined that postponing the mission is the best decision for the health, safety, and welfare of the participants. The new deadline for applications has been extended to Friday, November 12, 2021. Applications may be accepted after that date if space remains and scheduling constraints permit. Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The schedule is updated as follows:

Proposed Timetable

*** Note:** The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Thursday, March 30, 2022 (Optional)	• (Morning) Trade Mission Participants Arrive in Buenos Aires, Argentina. • (Afternoon) Welcome and Country Briefing (Argentina). • Networking coffee at the Ambassador's residence (TBC).
Friday, April 1, 2022 (Optional)	• One-on-One business matchmaking appointments (GKS day).
Saturday, April 2, 2022 (Optional)	• Free time for Argentina optional stop participants or travel day to Peru.
Sunday, April 3, 2022	• Trade Mission Participants Arrive in Lima, Peru.
Monday, April 4, 2022	• Welcome and Country Briefing (Peru). • Presentations and/or cabinet/ministry meetings. • Networking Lunch. • One-on-One business matchmaking appointments. • Networking Reception at Ambassador's residence (TBC).
Tuesday, April 5, 2022	• Travel to Santiago, Chile. • Welcome and Country Briefing (Chile). • Presentations.
Wednesday, April 6, 2022	• One-on-One business matchmaking appointments. • Networking Lunch. • Cabinet/ministry meetings. • Networking Reception at Ambassador's residence (TBC).
Thursday, April 7, 2022	• (Morning) Travel to Montevideo, Uruguay. • (Afternoon)Welcome and briefing. • Presentations by Uruguayan government entities.
Friday, April 8, 2022	• (Morning) Business matchmaking. • Closing Ambassador's reception (TBC). • (Afternoon) Trade mission participants depart for the U.S.

The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the Notice published at 85 FR 12259 (March 10, 2020). The applicants selected will be notified as soon as possible.

Contacts

Paul Matino, Senior International Trade Specialist, Baltimore, MD—USEAC, 410–962–4539, *Paul.Matino@trade.gov*.

Gemal Brangman, Director, Trade Events Task Force, Washington, DC, 202–482–3773, *Gemal.Brangman@trade.gov*.

Cybersecurity Business Development Mission to India

The United States Department of Commerce, International Trade Administration, is amending the Notice published at 86 FR 7705 (February 1, 2021), regarding the dates of ITA's planned Cybersecurity Business Development Mission to India, which have been modified from November 8–12, 2021, to May 23–27, 2022. The Department has been closely monitoring COVID–19 developments and has determined that postponing the mission is the best decision for the health, safety, and welfare of the participants. The new deadline for applications has been extended to August 5, 2021. Applications may be accepted after that date if space remains and scheduling constraints permit. Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The schedule is updated as follows:

Proposed Timetable

*** Note:** The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Sunday, May 22, 2022	• Trade Mission Participants Arrive in New Delhi.
Monday, May 23, 2022	• Welcome and Country Briefing. • One-on-One business matchmaking appointments. • Networking Lunch (No-Host). • One-on-One business matchmaking appointments. • Networking Reception at Deputy Chief of Mission residence (To Be Confirmed (TBC)).
Tuesday, May 24, 2022	• Breakfast roundtable with Indian industry groups and associations (TBC). • Cyber Security event to share best practices and promote participants. • Networking Lunch (No-Host). • Ministry and other Indian Government Briefings and Meetings. • Transportation from Hotel to Airport Included. • Travel to Mumbai.

Wednesday, May 25, 2022	• Welcome Briefing, Mumbai and Maharashtra State. • One-on-One business matchmaking appointments. • Networking Lunch (No-Host). • One-on-One business matchmaking appointments. • Networking Reception at Consul General residence (TBC).
Thursday, May 26, 2022	• Breakfast roundtable with Indian industry groups and associations (TBC). • Cyber Security event to share best practices and promote participants. • Networking Lunch (No-Host). • Indian Government Briefings and Meetings. • Travel to Airport (Not Included).
Friday, May 27, 2022	• OPTIONAL STOP—Bangalore or Hyderabad. • One-on-One business matchmaking appointments. • Networking Lunch (No-Host). • One-on-One business matchmaking appointments

The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the Notice published at 85 FR 12259 (March 10, 2020). The applicants selected will be notified as soon as possible.

Contacts

Delia Valdivia, Senior International Trade Specialist, U.S. Commercial Service, Los Angeles, CA, 310–597–8218, *delia.valdivia@trade.gov*.

Gemal Brangman, Director, Trade Events Task Force, Washington, DC, 202–482–3773, *Gemal.Brangman@trade.gov*.

Digital Transformation Business Development Mission to the Gulf Cooperation Council Region

The United States Department of Commerce, International Trade Administration, is amending the Notice published at 86 FR 21697 (April 23, 2021), regarding the dates of ITA's planned GCC Digital Transformation Trade Mission to Saudi Arabia, Kuwait, and Qatar, which have been modified from October 24–28, 2021 to January 23–27, 2022. The Department has been closely monitoring COVID–19 developments and has determined that postponing the mission is the best decision for the health, safety, and welfare of the participants. In an effort to provide U.S. companies with revised mission dates that work for the majority of the stops, the optional UAE stop that was originally offered was dropped from the revised mission schedule due to limited resources and prior commitments made in the UAE that conflict with the revised dates. The new deadline for applications has been extended to Thursday, September 30, 2021. Applications may be accepted after that date if space remains and scheduling constraints permit. Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The schedule is updated as follows:

Proposed Timetable

*** Note:** The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Saturday, January 22	• Travel to Riyad, Saudi Arabia.
Sunday, January 23	• Trade Mission Participants Arrive in Riyad, Saudi Arabia. • Welcome and Saudi Arabia Country Briefing. • Ministry and other Saudi Government Briefings and meetings. • Networking Lunch Hosted by AmCham Riyadh. • One-on-One business matchmaking appointments. • Networking Reception at AMB residence (TBC).
Monday, January 24	• One-on-One business matchmaking appointments. • Travel to Kuwait City.
Tuesday, January 25	• Travel to Kuwait City, Kuwait. • Welcome and Kuwait Country Briefing. • Ministry and other Kuwait Government Briefings and Meetings. • Networking Lunch (No-Host). • One-on-One business matchmaking appointments. • Networking Reception at AMB residence (TBC).
Wednesday, January 26	• One-on-One business matchmaking appointments. • Travel to Doha, Qatar. • Welcome and Qatar Country Briefing. • One-on-One business matchmaking appointments. • Networking Lunch (No-Host). • One-on-One business matchmaking appointments.
Thursday, January 27	• One-on-One business matchmaking appointments. • Networking Lunch (No-Host). • Trade Mission concludes

The U.S. Department of Commerce will review applications and make selection decisions on a comparative basis in accordance with the Notice published at 86 FR 21697 (April 23, 2021). The applicants selected will be notified as soon as possible.

Contacts

Ludwika Alvarez, Senior International Trade Specialist, U.S. Commercial Service, International Trade Administration, U.S. Department of Commerce, San Francisco, CA, Tel: 415–517–0265, *Ludwika.Alvarez@trade.gov*

Tatyana Aguirre, Commercial Consul, U.S. Consulate Dhahran, U.S. Commercial Service, International Trade Administration, U.S. Department of Commerce, Mobile: +1949 557 7664, *Tatyana.Aguirre@trade.gov*

Office of Middle East, Drew Pederson, Desk Officer for Kuwait, Oman, and the UAE, International Trade Administration, U.S. Department of Commerce, Tel: 202–569–7479, *Drew.Pederson@trade.gov*

Office of Middle East, Naomi Weigler, Desk Officer for Saudi Arabia, International Trade Administration, U.S. Department of Commerce, *Naomi.Wiegler@trade.gov*

Trade Mission to the Caribbean Region in Conjunction With the Trade Americas-Business Opportunities in the Caribbean Region Conference

The United States Department of Commerce, International Trade Administration, is amending the Notice published at 85 FR 29928 (May 19, 2020), regarding the dates of ITA's planned Trade Mission to the Caribbean Region in conjunction with the Trade Americas—Business Opportunities in the Caribbean Region Conference, which have been modified from November 15–20, 2020, to October 24–28, 2021. The Department has been closely monitoring COVID–19 developments and has determined that postponing the mission is the best decision for the health, safety and welfare of the participants. The new deadline for applications has been extended to July 15, 2022. Applications may be accepted after that date if space remains and scheduling constraints permit. Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The schedule is updated as follows:

Proposed Timetable

Saturday, October 22, 2022	• Travel Day/Arrival in Miami, FL. *Optional Local Tour/Activities.*
Sunday, October 23, 2022	• Miami, FL. Afternoon: Registration, Briefing and U.S. Embassy Officer Consultations. Evening: Networking Reception.
Monday, October 24, 2022	• Miami, FL. Morning: Registration and Trade Americas—U.S.-Caribbean Business Conference. Afternoon: U.S. Embassy Officer Consultations. Evening: Networking Reception.
Optional	
Tuesday–Thursday, October 25–28, 2021	• Travel day or Business-to-Business Meetings in: Option (A) Dominican Republic. Option (B) Barbados. Option (C) Guyana. Option (D) Jamaica. Option (E) Suriname. Option (F) The Bahamas. Option (H) Trinidad & Tobago (I) Haiti.

*** Note:** The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the Notice published at 84 FR 68393 (December 16, 2019). The applicants selected will be notified as soon as possible.

Contacts

U.S. Trade Americas Team Contact Information

Delia Valdivia, Senior International Trade Specialist, U.S. Commercial Service—Los Angeles (West), CA, *delia.valdivia@trade.gov,* Tel: 310–597–8218

Diego Gattesco, Director, U.S. Commercial Service—Wheeling, WV, *diego.gattesco@trade.gov,* Tel: 304–243–5493

Gemal Brangman,

Senior Advisor, Trade Missions, ITA Events Management Task Force.

[FR Doc. 2021–21230 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–824]

Thermal Paper From Spain: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that thermal paper from Spain is being, or is likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation, October 1, 2019, through September 30, 2020.

DATES: Applicable September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Abdul Alnoor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4554.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2021, Commerce published in the **Federal Register** its preliminary affirmative determination in the LTFV investigation of thermal paper from Spain, in which it postponed the final determination until September 24, 2021.[1] Although Commerce invited interested parties to comment on the *Preliminary Determination,* no party did so.

Scope of the Investigation

The product covered by this investigation is thermal paper from Spain. For a complete description of the scope of this investigation, *see* the appendix to this notice.

Scope Comments

In accordance with the preamble to Commerce's regulations,[2] the *Initiation Notice*[3] set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] On May 5, 2021, Commerce issued the Preliminary Scope Decision Memorandum.[5] We received scope comments from interested parties,

[1] *See Thermal Paper from Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 26003 (May 12, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296 (May 19, 1997).

[3] *See Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 69580 (November 3, 2020) (*Initiation Notice*).

[4] *See Initiation Notice.*

[5] *See* Memorandum, ''Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Preliminary Scope Decision,'' dated May 5, 2021 (Preliminary Scope Decision Memorandum).

which we addressed in the Final Scope Decision Memorandum.[6] Commerce did not modify the scope of this investigation since the *Preliminary Determination.*

Verification

Because the sole mandatory respondent in this investigation, Torraspapel S.A., did not respond to sections B–D of Commerce's antidumping duty questionnaire, Commerce reached the *Preliminary Determination* entirely on the basis of facts available with the application of adverse inferences (AFA). As such, because the *Preliminary Determination* was based entirely on AFA, we did not conduct a verification.

Use of Total Adverse Facts Available

Pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (Act), because Torraspapel S.A., did not respond to sections B–D of Commerce's antidumping duty questionnaire, we have continued to assign it the highest dumping margin alleged in the Petition, which is 41.45 percent.[7] As explained in the *Preliminary Determination,* at initiation we found the 41.45 percent Petition dumping margin to be both reliable and relevant.[8] Therefore, we corroborated the rate. No interested party commented on our decision to apply this rate to Torraspapel S.A.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding dumping margins that are zero, *de minimis,* or determined entirely under section 776 of the Act (facts available). Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all of the exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all-other producers or exporters not individually investigated.

Commerce determined the estimated weighted-average dumping margin for Torraspapel S.A. entirely under section 776 of the Act. Consequently, pursuant to section 735(c)(5)(B) of the Act and Commerce's practice under these circumstances, we assigned a dumping margin to the ''all-others''' companies equal to the simple average of the dumping margins from the Petition.[9] For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Torraspapel S.A.	41.45
All Others	37.07

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce applied AFA to the mandatory respondent in this investigation, Torraspapel, S.A., in accordance with section 776 of the Act, and the AFA dumping margin is based solely on the petition, there are no calculations to disclose.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of thermal paper from Spain, as described in the appendix to this notice, which were entered, or withdrawn from warehouse, for consumption on or after May 12, 2021, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the following amounts: (1) The cash deposit rate for Torraspapel S.A is equal to the company-specific estimated weighted-average dumping margin listed for Torraspapel S.A in the table in the ''Final Determination'' section of this notice; (2) if the exporter is not identified in the table in the ''Final Determination'' section of this notice, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin for the producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters in Spain is equal to the all-others estimated weighted-average dumping margin listed in the table in the ''Final Determination'' section of this notice.

These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of this final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of thermal paper from

[6] *See* Memorandum, ''Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Final Decision on General Scope Issues,'' dated concurrently with, and herby adopted by, this notice (Final Scope Decision Memorandum).

[7] *See Preliminary Determination* Preliminary Decision Memorandum.

[8] *Id.; see also* section 776(c) of the Act; 19 CFR 351.308(c) and (d); and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying IDM at Comment 1.

[9] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014); Petitioners' Letter, ''Petitions for the Imposition of Antidumping Duties on Imports of Thermal Paper From Germany, Japan, Korea, and Spain,'' dated October 7, 2020 at Volume V; Petitioners' Letter, ''Response of Petitioners to Volumes I–V Supplemental Questionnaires: Thermal Paper from Germany, Japan, Korea, and Spain,'' dated October 16, 2020 at section ''Petitioners' Responses to Supplemental Questions Regarding Volume V''; and Checklist, ''Enforcement and Compliance Office of AD/CVD Operations Antidumping Duty Investigation Initiation Checklist: Thermal Paper from Spain,'' dated October 27, 2020.

Spain no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section of this notice.

Notification Regarding Administrative Protective Order

This notice will serve as a final reminder to the parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: September 24, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of this investigation covers thermal paper in the form of ''jumbo rolls'' and certain ''converted rolls.'' The scope covers jumbo rolls and converted rolls of thermal paper with or without a base coat (typically made of clay, latex, and/or plastic pigments, and/or like materials) on one or both sides; with thermal active coating(s) (typically made of sensitizer, dye, and co-reactant, and/or like materials) on one or both sides; with or without a top coat (typically made of pigments, polyvinyl alcohol, and/or like materials), and without an adhesive backing. Jumbo rolls are defined as rolls with an actual width of 4.5 inches or more, an actual weight of 65 pounds or more, and an actual diameter of 20 inches or more (jumbo rolls). All jumbo rolls are included in the scope regardless of the basis weight of the paper. Also included in the scope are ''converted rolls'' with an actual width of less than 4.5 inches, and with an actual basis weight of 70 grams per square meter (gsm) or less.

The scope of this investigation covers thermal paper that is converted into rolls with an actual width of less than 4.5 inches and with an actual basis weight of 70 gsm or less in third countries from jumbo rolls produced in the subject countries.

The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 4811.90.8030 and 4811.90.9030. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2021–21304 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–139]

Certain Mobile Access Equipment and Subassemblies Thereof From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain mobile access equipment and subassemblies thereof (mobile access equipment) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2020, through December 31, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Andre Gziryan, 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) 482–3477 or (202) 482–2201, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on March 25, 2021.[1] On July 1, 2021, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now September 24, 2021.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*.

Scope of the Investigation

The products covered by this investigation are mobile access equipment from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties provided comments on the scope of the investigation, as it appeared in the *Initiation Notice.* For a summary of all scope related comments submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision

[1] *See Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 86 FR at 15922 (March 25, 2021) (*Initiation Notice*).

[2] *See Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-FairValue Investigation,* 86 FR 35059 (July 1, 2021).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of Sales in the Less Than Fair Value Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice*.

[6] *See* Memorandum, ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated July 26, 2021 (Preliminary Scope Decision Memorandum).

Memorandum, Commerce is not modifying the scope language as it appeared in the *Initiation Notice. See* the complete description of the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with section 772(a) of the Act and constructed export prices in accordance with section 772(b) of the Act. Because China is a non-market economy, within the meaning of section 771(18) of the Act, Commerce calculated normal value in accordance with section 773(c) of the Act.

In addition, pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily relied upon facts otherwise available, with adverse inferences, for the China-wide Entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[7] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[8] In this investigation, we calculated producer/exporter combination rates for respondents eligible for separate rates.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Lingong Group Jinan Heavy Machinery Co., Ltd	Lingong Group Jinan Heavy Machinery Co., Ltd	275.06	274.86
Zhejiang Dingli Machinery Co., Ltd	Zhejiang Dingli Machinery Co., Ltd	17.78	7.07

SEPARATE RATE APPLICABLE TO THE FOLLOWING NON-SELECTED COMPANIES

Non-selected exporter receiving a separate rate	Producer supplying the non-selected exporter receiving a separate rate	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Hunan Sinoboom Intelligent Equipment Co., Ltd	Hunan Sinoboom Intelligent Equipment Co., Ltd	56.55	47.42
Mantall Heavy Industry Co., Ltd	Mantall Heavy Industry Co., Ltd	56.55	47.42
Noblelift Intelligent Equipment Co., Ltd	Noblelift Intelligent Equipment Co., Ltd	56.55	47.42
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd.	Noblelift Intelligent Equipment Co., Ltd	56.55	47.42
Sany Marine Heavy Industry Co., Ltd	Sany Marine Heavy Industry Co., Ltd	56.55	47.42
Terex (Changzhou) Machinery Co., Ltd	Terex (Changzhou) Machinery Co, Ltd	56.55	47.42
Xuzhou Construction Machinery Group Imp. & Exp. Co., Ltd.	Xuzhou Construction Machinery Group Fire-Fighting Safety Equipment Co., Ltd.	56.55	47.42
China-Wide Entity		275.06	274.86

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise, as described in the scope of the investigation in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above, as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of subject merchandise that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of subject merchandise not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or China-wide entity) that supplied that third-country exporter.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the Preliminary Determination section's chart of estimated weighted-average dumping margins above.

Should the provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation,

[7] *See Initiation Notice,* 65 FR at 15926.

[8] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID–19 pandemic, Commerce is unable to conduct on-site verification in this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Commerce will notify interested parties of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[9] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 8 and 13, 2021, respectively, pursuant to 19 CFR 351.210(e), Zhejiang Dingli Machinery Co., Ltd. (Dingli) and Lingong Group Jinan Heavy Machinery Co., Ltd. (LGMG) requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 24, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation consists of certain mobile access equipment, which consists primarily of boom lifts, scissor lifts, and material telehandlers, and subassemblies thereof. Mobile access equipment combines a mobile (self-propelled or towed) chassis, with a lifting device (*e.g.,* scissor arms, boom assemblies) for mechanically lifting persons, tools and/or materials capable of reaching a working height of ten feet or more, and a coupler that provides an attachment point for the lifting device, in addition to other components. The scope of this investigation covers mobile access equipment and subassemblies thereof whether finished or unfinished, whether assembled or unassembled, and whether the equipment contains any additional features that provide for functions beyond the primary lifting function.

Subject merchandise includes, but is not limited to, the following subassemblies:

• Scissor arm assemblies, or scissor arm sections, for connection to chassis and platform assemblies. These assemblies include: (1) Pin assemblies that connect sections to form scissor arm assemblies, and (2) actuators that power the arm assemblies to extend and retract. These assemblies may

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[11] *See* Dingli's Letter, ''Dingli Request to Postpone Final Determination in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A–570–139),'' dated September 8, 2021; *see also* LGMG's Letter, ''Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; Request for Postponement of Final Determination and Extension of Provisional Measures Period,'' dated September 13, 2021.

or may not also include blocks that allow sliding of end sections in relation to frame and platform, hydraulic hoses, electrical cables, and/or other components;

• boom assemblies, or boom sections, for connection to the boom turntable, or to the chassis assembly, or to a platform assembly or to a lifting device. Boom assemblies include telescoping sections where the smallest section (or tube) can be nested in the next larger section (or tube) and can slide out for extension and/or articulated sections joined by pins. These assemblies may or may not include pins, hydraulic cylinders, hydraulic hoses, electrical cables, and/or other components;

• chassis assemblies, for connection to scissor arm assemblies, or to boom assemblies, or to boom turntable assemblies. Chassis assemblies include: (1) Chassis frames, and (2) frame sections. Chassis assemblies may or may not include axles, wheel end components, steering cylinders, engine assembly, transmission, drive shafts, tires and wheels, crawler tracks and wheels, fuel tank, hydraulic oil tanks, battery assemblies, and/or other components;

• boom turntable assemblies, for connection to chassis assemblies, or to boom assemblies. Boom turntable assemblies include turntable frames. Boom turntable assemblies may or may not include engine assembly, slewing rings, fuel tank, hydraulic oil tank, battery assemblies, counterweights, hoods (enclosures), and/or other components.

Importation of any of these subassemblies, whether assembled or unassembled, constitutes unfinished mobile access equipment for purposes of this investigation.

Processing of finished and unfinished mobile access equipment and subassemblies such as trimming, cutting, grinding, notching, punching, slitting, drilling, welding, joining, bolting, bending, beveling, riveting, minor fabrication, galvanizing, painting, coating, finishing, assembly, or any other processing either in the country of manufacture of the in-scope product or in a third country does not remove the product from the scope. Inclusion of other components not identified as comprising the finished or unfinished mobile access equipment does not remove the product from the scope.

The scope excludes forklifts, vertical mast lifts, mobile self-propelled cranes and motor vehicles that incorporate a scissor arm assembly or boom assembly. Forklifts are material handling vehicles with a working attachment, usually a fork, lifted along a vertical guide rail with the operator seated or standing on the chassis behind the vertical mast. Vertical mast lifts are person and material lifting vehicles with a working attachment, usually a platform, lifted along a vertical guide rail with an operator standing on the platform. Mobile self-propelled cranes are material handling vehicles with a boom attachment for lifting loads of tools or materials that are suspended on ropes, cables, and/or chains, and which contain winches mounted on or near the base of the boom with ropes, cables, and/or chains managed along the boom structure. The scope also excludes motor vehicles (defined as a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line pursuant to 49 U.S.C. 30102(a)(7)) that incorporate a scissor arm assembly or boom assembly. The scope further excludes vehicles driven or drawn by mechanical power operated only on a rail line that incorporate a scissor arm assembly or boom assembly. The scope also excludes (1) rail line vehicles, defined as vehicles with hi-rail gear or track wheels, and a fixed (non-telescopic) main boom, which perform operations on rail lines, such as laying rails, setting ties, or other rail maintenance jobs; and (2) certain rail line vehicle subassemblies, defined as chassis subassemblies and boom turntable subassemblies for rail line vehicles with a fixed (non-telescopic) main boom.

Certain mobile access equipment subject to this investigation is typically classifiable under subheadings 8427.10.8020, 8427.10.8030, 8427.10.8070, 8427.10.8095, 8427.20.8020, 8427.20.8090, 8427.90.0020 and 8427.90.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Parts of certain mobile access equipment are typically classifiable under subheading 8431.20.0000 of the HTSUS. While the HTSUS subheadings are provided for convenience and customs purposes only, the written description of the merchandise under investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2021–21257 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Voluntary Laboratory Accreditation Program (NVLAP) Information Collection System

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 29, 2021.

ADDRESSES: Interested persons are invited to submit written comments by mail to Maureen O'Reilly, Management Analyst, NIST by email to *PRAcomments@doc.gov.* Please reference OMB Control Number 0693–0003 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Bethany Hackett, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140; phone: (301) 975–6113; email: *bethany.hackett@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request to revise and extend this currently approved information collection. This information is collected from all testing or calibration laboratories that apply for NVLAP accreditation. Applicants provide the minimum information necessary for NVLAP to evaluate the competency of laboratories to carry out specific tests or calibrations or types of tests or calibrations. The collection is mandated by 15 CFR 285.

II. Method of Collection

Each new or renewal applicant laboratory electronically submits its application for NVLAP accreditation through a self-service, web-based portal called the ''NVLAP Interactive Web System'' (NIWS). This method of collection also gives applicant laboratories the ability to upload document files needed to support the application process and to maintain their own profile information.

III. Data

OMB Control Number: 0693–0003.
Form Number(s): None.

Type of Review: Regular submission, revision of a current information collection.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; and Federal, State or local government.

Estimated Number of Respondents: 650.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 1,950 hours.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Required to obtain benefits.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

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

[FR Doc. 2021–21285 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Cybersecurity Center of Excellence (NCCoE) Participant Letter(s) of Interest (LoI)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 29, 2021.

ADDRESSES: Interested persons are invited to submit written comments by mail to Maureen O'Reilly, Management Analyst, NIST, by email to *PRAcomments@doc.gov.* Please reference OMB Control Number 0693–0075 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Keri Bray, NIST NCCoE, 9700 Great Seneca Highway, Rockville, MD 20850, 301–975–0220, *keri.bray@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In order to fulfill its core mission, the National Cybersecurity Center of Excellence (NCCoE) publishes announcements in the **Federal Register** of new collaborative projects to address cybersecurity challenges. In response to these announcements, technology vendors are invited to submit Letters of Interest (LoI) for technologies relevant to the challenge. These letters specify the product(s) that the potential collaborator is submitting for consideration, how the product(s) address(es) one or more of the requirements of the project, and contact information for the company's representative. Subsequent to the submission of LoIs, NIST invites companies with relevant technology to enter into a Collaborative Research and Development Agreement (CRADA) with NIST.

II. Method of Collection

Upon request, submitters are provided with questions in an electronic document that can be filled in, signed, and submitted via mail or electronic mail.

III. Data

OMB Control Number: 0693–0075.

Form Number(s): None.

Type of Review: Regular submission, revision of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 120.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 240.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Sheleen Dumas,

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

[FR Doc. 2021–21243 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB458]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Salmon Technical Team (STT) will host a joint online meeting with the Salmon Subcommittee of the Scientific and Statistical Committee and the Model Evaluation Workgroup. The meeting is open to the public.

DATES: The online meeting will be held Wednesday and Thursday, October 20–21, 2021, from 8:30 a.m. Pacific Daylight Time, until 3 p.m. daily, or until business is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Staff Officer, Pacific Council; telephone: (503) 820–2410.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to discuss and review proposed changes and/or updated information on analytical methods used in salmon management that were identified by the Council at the September 2021 Council meeting. Any results and recommendations from the methodology review will be presented at the November 2021 Council meeting via webinar. The STT may also discuss and prepare for future STT meetings and future meetings with the Pacific Council and its advisory bodies, including, but not limited to, potential future salmon methodology review topic candidates and the November 2021 Council meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: September 27, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–21330 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB456]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Management Team (GMT) will hold a weeklong work session that is open to the public.

DATES: The online meeting will be held Monday October 18, 2021, from 1 p.m. Pacific Daylight Time (PDT) until business is completed for the day. The GMT will reconvene on Tuesday, October 19 through Friday, October 22, 2021 at 8:30 a.m. PDT until business for each day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, Staff Officer, Pacific Council; telephone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT meeting is to develop recommendations on the development of the 2023–24 harvest specifications and routine management measures for consideration by the Pacific Council at its November 2021 meeting. The GMT will also consider new management measures proposed by the Council at their September meeting, such as potential changes to shortbelly rockfish management and reconfiguration of Groundfish Conservation Area boundaries. The GMT may also address other groundfish, Pacific halibut, and administrative agenda items scheduled for the November Pacific Council meeting. A detailed agenda will be available on the Pacific Council's website prior to the meeting. No management actions will be decided by the GMT.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: September 27, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–21331 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB469]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Snapper Grouper Advisory Panel (AP) October 19–21, 2021.

DATES: The Snapper Grouper AP will meet from 1:30 p.m. until 4:30 p.m. on October 19, 2021; from 9 a.m. until 4 p.m. on October 20, 2021; and 9 a.m. until 12 p.m. on October 21, 2021.

ADDRESSES:

Meeting address: The meeting will be held via webinar.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The AP meeting is open to the public and will be available via webinar as it occurs. Registration is required. Webinar registration information, a public comment form, and other meeting materials will be posted to the Council's website at: *http://safmc.net/safmc-meetings/current-advisory-panel-meetings/* as it becomes available.

The Snapper Grouper AP will discuss and provide recommendations on the following topics: Management options for golden tilefish, red snapper, and gag grouper in response to recent or upcoming stock assessments; impacts of current commercial permit provisions; management actions considered for snowy grouper through Snapper Grouper Amendment 51; actions considered for yellowtail snapper through Snapper Grouper Amendment 44; modifications to vermilion snapper commercial trip limits; and holistic management strategies for the entire snapper grouper fishery. In addition, the AP will provide information to develop a Fishery Performance Report for gray triggerfish. The AP will also receive updates on Snapper Grouper Amendment 50 considering revised catch levels and management measures for red porgy, Snapper Grouper Amendment 49 considering revised catch levels and management measures for greater amberjack and removal of recreational annual catch targets, Snapper Grouper Amendment 48 addressing modernization of the Wreckfish Individual Transferable Quota (ITQ) program and revised objectives for the Snapper Grouper Fishery Management Plan, East Coast Climate Change Scenario Planning, South Atlantic Southeast Data Assessment and Review (SEDAR) stock assessment projects, the Council's Citizen Science Program initiatives, and other items as needed.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 27, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–21333 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB446]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 77 Highly Migratory Species (HMS) Hammerhead Sharks Data Webinar II.

SUMMARY: The SEDAR 77 assessment of the Atlantic stock of hammerhead sharks will consist of a stock identification (ID) process, data webinars/workshop, a series of assessment webinars, and a review workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 77 HMS Hammerhead Sharks Data Webinar II has been scheduled for Wednesday, October 20, 2021, from 1 p.m. until 4 p.m. EDT.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/6886780503219921677.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 77 HMS Hammerhead Shark Data

Webinar II are as follows: Discuss data issues or concerns.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 27, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–21332 Filed 9–29–21; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 21.2]

Notice of Prehearing Conference

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: Notice of prehearing conference for In the Matter of Amazon.com, Inc.; CPSC Docket No. 21–2.

DATES: Friday, October 15, 2021 at 2:30 p.m. Eastern Time.

ADDRESSES: This event will be held remotely; video teleconference.

FOR FURTHER INFORMATION CONTACT: Benjamin Ristau, Attorney-Adviser, Office of Administrative Law Judges, U.S. Securities and Exchange Commission, 202–551–5201.

SUPPLEMENTARY INFORMATION: The text of the Presiding Officer's September 24, 2021, Order Scheduling Prehearing Conference appears below.

Authority: Consumer Product Safety Act, 15 U.S.C. 2064.

Dated: September 24, 2021.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

United States of America

Consumer Product Safety Commission

In the Matter of Amazon.com., Inc.
CPSC Docket No. 21–2

September 24, 2021

Order Scheduling Prehearing Conference

This proceeding commenced with the filing of a complaint on July 14, 2021. The complaint was published in the **Federal Register** on July 21, 2021. 86 FR 38,450. On August 23, 2021, the Acting Chairman of the Consumer Product Safety Commission appointed me as the presiding officer for this proceeding. An interagency agreement for the loan of my services to the CPSC was finalized on September 22, 2021.

Under 16 CFR 1025.21, an initial prehearing conference shall be held within fifty days of the publication of the complaint in the **Federal Register** unless ''unusual circumstances would render it impractical or valueless'' to do so. Due to the timing of my appointment and the interagency agreement, holding a prehearing conference within fifty days of publication is impossible, and therefore impractical. A prehearing conference shall be held as follows:

Date: Friday, October 15, 2021
Time: 2:30 p.m. Eastern Time
Means: Video teleconference

Before the prehearing conference, the parties must confer and discuss the issues listed in 16 CFR 1025.21(a)(1) through (14). The parties should also discuss a plan for discovery and whether there are issues as to preservation, retrieval, review, disclosure, or production of discoverable information, including issues as to the disclosure or discovery of electronically stored information. The parties must submit by October 12, 2021, a joint letter summarizing the result of their discussion and proposing the procedures for resolving this proceeding, including proposed deadlines. If the parties are unable to reach agreement about proposed procedures and deadlines, their letter should describe their disagreements. The parties should also report whether they have discussed settlement and, if so, whether they believe settlement is possible or likely.

The Consumer Products Safety Commission should arrange for a court reporter for the prehearing conference. I direct that notice of this conference be published in the **Federal Register**. 16 CFR 1025.21(b).

/s/James E. Grimes

Administrative Law Judge

[FR Doc. 2021–21224 Filed 9–29–21; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2021–OIG–0056]

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General, U.S. Department of Education.

ACTION: Notice of a modified system of records and rescindment of a system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a modified system of records entitled the ''Investigative Files of the Inspector General'' (18–10–01) and rescindment of the system of records notice entitled ''Hotline Complaint Files of the Inspector General'' (18–10–04). The Investigative Files of the Inspector General system of records provides essential support for investigative activities of the Office of Inspector General (OIG) relating to the Department's programs and operations, enabling the OIG to secure and maintain the necessary information and to coordinate with other law enforcement agencies as appropriate.

DATES: Submit your comments on this modified system of records notice and rescindment of a system of records notice on or before November 1, 2021.

This modified system of records will become applicable upon publication in the **Federal Register** on September 30, 2021, unless the system of records notice needs to be changed as a result of public comment. Proposed modified routine uses (1), (3), (4), (5), (6), (9), (14), and (15) and proposed new routine uses (16), (17), (18), (19), and (20) in the paragraph entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' will become applicable on November 1, 2021, unless the modified system of records notice needs to be changed as a result of public comment. The Department will publish any changes to the modified system of records notice that result from public comment.

The rescinded system of records will become applicable September 30, 2021,

unless it needs to be changed as a result of public comment. The Department will publish any changes to the rescinded system of records notice that result from public comment.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''FAQ'' link.

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this modified system of records notice or this rescindment of a system of records notice, address them to: Howard Sorensen, Assistant Counsel to the Inspector General, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue SW, Room 8161, PCP Building, Washington, DC 20202–1510.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Howard Sorensen, Assistant Counsel to the Inspector General, 400 Maryland Avenue SW, PCP Building, Room 8166, Washington, DC 20202–1510. Telephone: (202) 245–7072.

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

SUPPLEMENTARY INFORMATION: The Department is rescinding the Hotline Complaint Files of the Inspector General system of records notice in order to consolidate the records that were previously maintained in that system with the Investigative Files of the Inspector General system of records.

The main reason the Department has modified the Investigative Files of the Inspector General system of records is to add a routine use entitled ''Whistleblower Reprisal Disclosure'' in order to expand the circumstances in which the OIG may disclose records to fulfil the whistleblower reprisal investigation reporting requirements of 41 U.S.C. 4712(b)(1). This routine use will allow the OIG to non-consensually disclose records to a public or private entity that employs or employed a complainant and that, at the time of the alleged reprisal, is a contractor, subcontractor, grantee, or subgrantee of the Department.

Additionally, the Department modified this system of records to reflect the inclusion of the records previously covered by the system of records notice entitled ''Hotline Complaint Files of the Inspector General,'' which is being rescinded by this notice.

The Department modified the section entitled ''SECURITY CLASSIFICATION'' from ''none'' to ''unclassified'' to comply with the requirements of Office of Management and Budget (OMB) Circular A–108 entitled ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.''

The Department modified the section entitled ''SYSTEM LOCATION'' to reflect the current name and location of the OIG in Potomac Center Plaza, and the data center and alternate site where records are maintained. The section entitled ''SYSTEM MANAGER(S)'' has also been updated to reflect the current location of the Office of Inspector General in Potomac Center Plaza.

The section entitled ''PURPOSE(S) OF THE SYSTEM'' has been updated to include the purposes for maintaining the records previously maintained in the Hotline Complaint Files of the Inspector General system of records. These purposes included maintaining records of complaints and allegations, documenting the outcome of the disposition of those complaints and allegations, and maintaining records for the purpose of reporting to entities responsible for oversight of Federal funds. This section also has been updated to reflect the entity to which the Inspectors General must report their activities as the Council of Inspectors General for Integrity and Efficiency (CIGIE). Finally, this section has been updated to include conducting activities to prevent and detect fraud and abuse in programs and operations of the Department, such as fraud awareness and detection training, as a purpose for the records maintained in the system.

The section entitled ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM'' has been updated to include complainants as a category of individuals covered by the system. This section has also been updated to explain that complainants, witnesses, and subjects include individuals who are sources of information or have made complaints to the OIG Hotline, individuals who allegedly have knowledge regarding wrongdoing affecting the programs and operations of the Department, and individuals about whom complaints and allegations have been made.

The section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' has been updated to include hotline complaint files as a category of records in the system and to explain that the information contained in investigation and hotline complaint files will include, among other things, evidence obtained by subpoena, search warrant, or other process. This section has also been updated to include additional information about the specific data elements that may be maintained in hotline complaint files. The section has also been updated to include records needed to calculate and report statistical information on investigation efforts and manage property resources used in investigation activities.

The section entitled ''RECORD SOURCE CATEGORIES'' has been updated to include the sources of records from which a complaint may be received. This section has also been updated to include recipients and subjects of subpoenas, search warrants, or other processes as sources of records maintained in the system. Finally, this section has been updated to indicate that information may also be obtained from other persons or entities from which information is obtained under a routine use.

The section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES,'' has been modified, as described below.

The Department modified routine use (1), entitled ''Disclosure for Use by Other Law Enforcement Agencies,'' to

align it with language used by the Department to permit disclosures of records for the same purpose in the system of records notice entitled ''The Office of Inspector General Data Analytics System (ODAS)'' (18–10–02).

The Department modified routine use (3), previously entitled ''Disclosure for Use in Employment, Employee Benefit, Security Clearance, and Contracting Decisions,'' to standardize it with other language used by the Department to permit disclosures of records in Department systems of records.

The Department modified routine use (4), previously entitled ''Disclosure to Public and Private Sources in Connection with the Higher Education Act of 1965, as Amended (HEA),'' to change the word ''Sources'' in the title to ''Entities'' to more accurately reflect that this disclosure is to entities participating in programs authorized by the HEA.

The Department modified routine use (5), previously entitled ''Litigation Disclosure,'' to standardize it with other language used by the Department to permit disclosures of records in Department systems in the context of judicial and administrative litigation and alternative dispute resolution.

The Department modified routine use (6), previously entitled ''Disclosure to Contractors and Consultants,'' to remove ''consultants'' from the title and to remove the reference to ''Privacy Act safeguards, as required under 5 U.S.C. 552a(m)'' to now require that all contractors agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records. The Department is also removing language that indicated that the Department would require these safeguards ''before entering into such a contract'' to instead indicate that they will be included ''as part of such a contract.''

The Department modified routine use (9), entitled ''Congressional Member Disclosure,'' to standardize it with other language used by the Department to permit disclosures of records to a congressional member in response to inquiries from such member made at the written request of the individual whose records are being disclosed.

The Department modified routine use (14), entitled ''Disclosure to Federal Entities Responsible for Oversight of Federal Funds,'' to remove obsolete references to the former Recovery Accountability and Transparency Board (RATB), and any successor entity, and the Government Accountability and Transparency Board (GATB), and any successor entity, and state, local, and foreign agencies; and, to add disclosures to Federal boards responsible for coordinating and conducting oversight of Federal funds or for assisting in the enforcement, investigation, prosecution, or oversight of violations of administrative, civil, or criminal law or regulation.

Pursuant to the requirements in OMB Memorandum M–17–12 entitled ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' the OIG added an additional routine use (16) to permit the Department to disclose records from this system of records in the course of assisting another Federal agency or entity in responding to a breach of personally identifiable information, as well as modified routine use (15), permitting the Department to disclose records from this system of records in responding to a breach of personally identifiable information in this system of records.

The Department added routine use (17), entitled ''Whistleblower Reprisal Disclosure,'' to permit the OIG to disclose records in this system of records not only to a complainant alleging whistleblower reprisal, but also to a public or private entity that employs or employed a complainant and that, at the time of the alleged reprisal, was a contractor, subcontractor, grantee, or subgrantee of the Department, to the extent necessary to fulfill the whistleblower reprisal investigation reporting requirements of 41 U.S.C. 4712(b)(1), or any other whistleblower reprisal law that requires disclosure to a complainant or to an entity covered by the whistleblower reprisal law that employs or employed the complainant.

The Department added routine use (18), entitled ''Fraud Awareness and Prevention Disclosure,'' to permit the OIG to disclose records to participants in Department programs and any public or private agency responsible for oversight of the participants in order to conduct activities authorized by Section 4(a)(3) of the Inspector General Act of 1978, as amended, to prevent and detect fraud and abuse in the programs and operations of the Department, including fraud awareness and detection training.

The Department added routine use (19), entitled ''Victim Assistance,'' to permit the OIG to provide complainants, victims, or alleged victims with information and explanations about the progress or results of the investigation or case arising from the matters about which they complained and/or in which they may have been a victim.

The Department added routine use (20), entitled ''Disclosure to Former Employees Pursuant to 5 U.S.C. 3322,'' to permit the OIG to disclose records to a former employee of the Department who resigns from Federal service prior to the resolution of a personnel investigation in order to fulfill the personnel record notation requirements of 5 U.S.C. 3322.

The Department modified the section entitled ''POLICIES AND PRACTICES FOR STORAGE OF RECORDS'' to remove reference to bar-lock file cabinets and replace it with a description of the current storage method in safes and cabinets in secured rooms.

The Department modified the section entitled ''POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS'' to specify the current applicable Department records and disposition schedules covering records in this system.

The Department modified the section entitled ''ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS'' to include additional details on physical security, storage, and access to electronic records.

The Department also added a section entitled ''HISTORY,'' as required by OMB Circular A–108, entitled ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.''

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

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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.

Sandra D. Bruce,

Deputy Inspector General delegated the duties of Inspector General.

For the reasons discussed in the preamble, the Inspector General, U.S. Department of Education (Department), publishes a notice of a rescindment of a system of records and a notice of a modified system of records to read as follows:

RESCINDED SYSTEM NAME AND NUMBER:

Hotline Complaint Files of the Inspector General (18–10–04).

HISTORY:

The system of records notice entitled ''Hotline Complaint Files of the Inspector General'' (18–10–04) was published in the **Federal Register** on June 4, 1999 (64 FR 30157–30159), corrected on December 27, 1999 (64 FR 72407), and most recently altered on July 12, 2010 (75 FR 39669–39671).

MODIFIED SYSTEM NAME AND NUMBER:

Investigative Files of the Inspector General (18–10–01).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General, U.S. Department of Education, 550 12th Street SW, Potomac Center Plaza, Washington, DC 20202–1510.

AINS, 44470 Chilum Place, Ashburn, VA 20147 (Primary Datacenter), and 1905 Lunt Avenue, Elk Grove, IL 60007 (Alternate Site).

SYSTEM MANAGER(S):

Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, 550 12th Street SW, Potomac Center Plaza, Washington, DC 20202–1510.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, (5 U.S.C. Appendix).

PURPOSE(S) OF THE SYSTEM:

Pursuant to the Inspector General Act of 1978, as amended, the system is maintained for the purposes of: (1) Conducting and documenting investigations by the Office of Inspector General (OIG) or other investigative agencies regarding Department programs and operations and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations that have the authority to bring criminal prosecutions or civil or administrative actions, or to impose other disciplinary sanctions; (2) documenting the outcome of OIG investigations; (3) maintaining a record of the activities that were the subject of investigations; (4) reporting investigative findings for use in operating and evaluating Department programs or operations and in the imposition of civil or administrative sanctions; (5) maintaining a record of complaints and allegations received relative to Department of Education programs and operations and documenting the outcome of OIG reviews and disposition of those complaints and allegations; (6) coordinating relationships with other Federal agencies, State and local governmental agencies, and nongovernmental entities in matters relating to the statutory responsibilities of the OIG and reporting to such entities on government-wide efforts pursuant to the oversight of Federal funds; (7) acting as a repository and source for information necessary to fulfill the reporting requirements of the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix; (8) reporting on OIG activities to the Council of Inspectors General for Integrity and Efficiency (CIGIE); (9) participating in the investigative qualitative assessment review process requirements of the Homeland Security Act of 2002 (Pub. L. 107–296); and, (10) conducting activities to prevent and detect fraud and abuse in the programs and operations of the Department, including fraud awareness and detection training.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system include subjects or targets of investigations, witnesses, complainants, victims, current and former employees of the Department and the OIG, and individuals who have any relationship to financial assistance or other educational programs administered by the Department, or to management concerns of the Department, including but not limited to grantees, subgrantees, contractors, subcontractors, program participants, recipients of Federal funds or federally insured funds, and officers, employees, or agents of institutional recipients or program participants. Complainants, witnesses, and subjects include individuals who are sources of information or have made complaints to the OIG Hotline, individuals who allegedly have knowledge regarding wrongdoing affecting the programs and operations of the Department, and individuals about whom complaints and allegations have been made.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records maintained in the system include investigation and hotline complaint files pertaining to violations of criminal laws, fraud, waste, and abuse with respect to the administration of Department programs and operations, and violations of employee Standards of Conduct in 34 CFR part 73. These files will contain, but will not be limited to: Electronic information including names, addresses, Social Security numbers, dates of birth, and aliases for subjects, targets, witnesses, and victims associated with investigations; reports of interview; evidence obtained by a subpoena, search warrant, or other process; investigative memoranda; requests and approvals for case openings and closings and for the use of special investigative techniques requiring approval by management; and electronic copies of photographs, scanned documents, and electronic media such as audio and video. The system will store investigation work products, as well as all investigation results, records needed to calculate and report statistical information on investigation efforts, and other tracking information needed to identify trends, patterns, and other indicators of fraud, waste, and abuse within the Department of Education programs and operations. The system will also store records to manage government-issued property and other resources used in investigation activities.

Specific data related to complaints may also include, but is not limited to, name, address, and contact information (if available) of the complainant, the date the complaint was received, the affected program area, the nature and subject of the complaint, and any additional contacts and specific comments provided by the complainant. In addition, information on the OIG disposition of the complaint is included in the system.

RECORD SOURCE CATEGORIES:

Information in this system comes from Departmental and other Federal, State, and local government records; interviews of witnesses; recipients and subjects of subpoenas, search warrants or other processes; and documents and other material furnished by nongovernmental sources. Sources may include complainants and confidential sources. Complainants may include, but are not limited to, current and former employees of the Department, employees of other Federal agencies, employees of State and local agencies, private individuals, and officers and employees of non-governmental

organizations that are involved with Department programs, contracts, or funds or have knowledge about Department programs, contracts, or funds. Information in this system also may be obtained from other persons or entities from which data is obtained under routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The OIG may disclose information contained in a record in this system of records under the routine uses listed in this system of records notice without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected. The OIG may make these disclosures on a case-by-case basis or, through a computerized comparison of records authorized by Section 6(j) of the Inspector General Act of 1978, as amended. As specified, disclosures may also be made by the Department.

(1) Disclosure for Use by Other Law Enforcement Agencies. The OIG may disclose information from this system of records as a routine use to any Federal, State, local, foreign agency, or other public authority responsible for enforcing, investigating, prosecuting, overseeing, or assisting in the enforcement, investigation, prosecution, or oversight of, violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, prosecutorial, or oversight responsibility of the Department or of the receiving entity.

(2) Disclosure to Public and Private Entities to Obtain Information Relevant to Department of Education Functions and Duties. The OIG may disclose records to public or private sources to the extent reasonably deemed necessary to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry.

(3) Employment, Benefit, and Contracting Disclosure.

(a) *For Decisions by the Department.* The OIG may disclose a record to a Federal, State, local, or foreign agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The OIG may disclose a record to a Federal, State, local, or foreign agency, other public authority, or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(4) Disclosure to Public and Private Entities in Connection with the Higher Education Act of 1965, as Amended (HEA). The OIG may disclose records to facilitate compliance with program requirements to any accrediting agency that is or was recognized by the Secretary of Education pursuant to the HEA; to any educational institution or school that is or was a party to an agreement with the Secretary of Education pursuant to the HEA; to any guaranty agency that is or was a party to an agreement with the Secretary of Education pursuant to the HEA; or to any agency that is or was charged with licensing or legally authorizing the operation of any educational institution or school that was eligible, is currently eligible, or may become eligible to participate in any program of Federal student assistance authorized by the HEA.

(5) Litigation and Alternative Dispute Resolution (ADR) Disclosure.

(a) *Introduction.* In the event that one of the parties listed in sub-paragraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the OIG or the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any of its components;

(ii) Any Department employee in his or her official capacity;

(iii) Any employee in his or her individual capacity where the Department of Justice (DOJ) agrees or has been requested to provide or arrange for representation for the employee; or

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States, where the Department determines that the judicial or administrative litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the OIG determines that disclosure of certain records to the DOJ is relevant and necessary to judicial or administrative litigation or ADR, the OIG or the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the OIG determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, or to a person or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the judicial or administrative litigation or ADR, the OIG or the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) Disclosure to Parties, Counsels, Representatives, or Witnesses. If the OIG determines that disclosure of certain records is relevant and necessary to judicial or administrative litigation or ADR, the OIG or the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(6) Disclosure to Contractors. If the OIG contracts with an entity to perform any function or analysis that facilitates or is relevant to an OIG investigation, audit, inspection, or other inquiry, the OIG may disclose the records to those contractors. As part of such a contract, the OIG or the Department shall require the contractor to maintain safeguards to protect the security and confidentiality of the disclosed records.

(7) Debarment and Suspension Disclosure. The OIG may disclose records to another Federal agency considering suspension or debarment action if the information is relevant to the suspension or debarment action. The OIG also may disclose information to another agency to gain information in support of the Department's own debarment and suspension actions.

(8) Disclosure to the Department of Justice (DOJ). The OIG may disclose information from this system of records as a routine use to the DOJ to the extent necessary for obtaining the DOJ's advice on any matter relevant to Department programs or operations.

(9) Congressional Member Disclosure. The OIG may disclose records to a Member of Congress in response to an inquiry from the Member made at the written request of that individual whose records are being disclosed. The Member's right to the information is no greater than the right of the individual who requested it.

(10) Benefit Program Disclosure. The OIG may disclose records to any Federal, State, local, or foreign agency,

or other public authority, if relevant to the prevention or detection of fraud and abuse in benefit programs administered by any agency or public authority.

(11) Overpayment Disclosure. The OIG may disclose records to any Federal, State, local, or foreign agency, or other public authority, if relevant to the collection of debts and overpayments owed to any agency or public authority.

(12) Disclosure to the Council of the Inspectors General on Integrity and Efficiency (CIGIE). The OIG may disclose records to members and employees of the CIGIE for the preparation of reports to the President and Congress on the activities of the Inspectors General.

(13) Disclosure for Qualitative Assessment Reviews. The OIG may disclose records to members of the CIGIE, the DOJ, the U.S. Marshals Service, or any Federal agency for the purpose of conducting qualitative assessment reviews of the investigative operations of the OIG to ensure that adequate internal safeguards and management procedures are maintained.

(14) Disclosure to Federal Entities Responsible for Oversight of Federal Funds. The OIG may disclose records to any Federal agency, entity, or board responsible for coordinating and conducting oversight of Federal funds, in order to prevent fraud, waste, and abuse related to Federal funds, or for assisting in the enforcement, investigation, prosecution, or oversight of violations of administrative, civil, or criminal law or regulation, if that information is relevant to any enforcement, regulatory, investigative, prosecutorial, or oversight responsibility of the Department or of the receiving entity.

(15) Disclosure in the Course of Responding to Breach of Data. The OIG may disclose records from this system to appropriate agencies, entities, and persons when: (a) The OIG or the Department suspects or has confirmed that there has been a breach of the system of records; (b) the OIG or the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the OIG or the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(16) Disclosure in Assisting another Agency in Responding to a Breach of Data. The OIG may disclose records from this system to another Federal agency or Federal entity, when the OIG or the Department determines that information from this system of records 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, programs, and operations), the Federal government, or national security, resulting from a suspected or confirmed breach.

(17) Whistleblower Reprisal Disclosure. The OIG may disclose records to a complainant alleging whistleblower reprisal, or to a public or private entity that employs or employed the complainant and that, at the time of the alleged reprisal, was a grantee, subgrantee, contractor, or subcontractor of the Department to the extent necessary to fulfill the whistleblower reprisal investigation reporting requirements of 41 U.S.C. 4712(b)(1), or any other whistleblower reprisal law requiring a disclosure to a complainant or to a public or private entity that employs or employed the complainant.

(18) Fraud Awareness and Prevention Disclosure. The OIG may disclose records to participants in programs of the Department and any public or private agency responsible for oversight of the participants in order to conduct activities authorized by Section 4(a)(3) of the Inspector General Act of 1978, as amended, to prevent and detect fraud and abuse in the programs and operations of the Department, including fraud awareness and detection training.

(19) Victim Assistance. A record from the system of records may be disclosed to complainants, victims, or alleged victims to provide such persons with information and explanations concerning the progress or results of the investigation or case arising from the matters about which they complained and/or in which they may have been a victim.

(20) Disclosure to Former Employees Pursuant to 5 U.S.C. 3322. The OIG may disclose records to a former employee of the Department when an adverse finding is made after the employee, who was the subject of a personnel investigation, resigned from Federal service prior to the resolution of a personnel investigation to the extent necessary to fulfill the requirements of 5 U.S.C. 3322. Pursuant to 5 U.S.C. 3322, the Department must make a permanent notation in the employee's official personnel record file after providing notice of the adverse finding and any supporting documentation.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are stored on a Web-based computer system with security requirements as required by law. Hard-copy records are maintained in secure rooms, in security-type safes, or in secure cabinets, all in restricted access space.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by manual or computer search of alphabetical indices or cross-indices. Indices list names, Social Security numbers, dates of birth, and other personal information of individuals. Indices also list names of companies and organizations.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Investigative files are retained and disposed of in accordance with ED Records Schedule 218, ''Investigation Records of the Inspector General'' (N1–441–02–1, Items 2a, 2b, and 2c). Investigative files developed during investigations of known or alleged fraud, abuse, and irregularities or violations of laws and regulations are destroyed 10 years after cut off. Investigative files not relating to a specific investigation are destroyed 5 years after cut off. (''Cut off'' occurs at the end of the fiscal year in which the case is closed.)

Hotline complaint files are retained and disposed of in accordance with ED Records Schedule 217, ''Hotline Records of the Inspector General'' (N1–441–02–1, Items 3a, 3b, and 3c). Hotline complaint files are destroyed 5 years after cut off. (''Cut off'' occurs at the end of the fiscal year in which the complaint is resolved.)

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records is limited to authorized personnel only. All physical access to the Department's sites, and to the sites of the Department's contractor (Primary Datacenter) and subcontractor (Alternate Site), where this system of records is maintained, is controlled and monitored by security personnel.

Electronic records are maintained on computer databases that are compliant with FedRAMP baseline security controls as described in the System Security Plan required by FedRAMP to meet the Federal Information Security Modernization Act (FISMA) compliance mandate. All security for the system is maintained in accordance with

Moderate data sensitivity controls. An individual's ability to access and alter the records is limited to a ''need to know'' basis and authorized log-on codes and passwords prevent unauthorized users from gaining access to data and system resources.

Hard copy records are maintained in secure rooms, in security-type safes, or in secure cabinets, all in restricted access spaces.

RECORD ACCESS PROCEDURES:

See ''EXEMPTIONS PROMULGATED FOR THE SYSTEM.'' As provided in 34 CFR 5b.11(b)(3), (c)(1)(ii), and (f), the record access procedures are not applicable to criminal investigative files except at the discretion of the Inspector General. To the extent that the procedures may apply to criminal investigative files, they are subject to the conditions set forth at 34 CFR 5b.11(b)(3). The record access procedures are applicable to non-criminal investigative files subject to the conditions set forth at 34 CFR 5b.11(c)(1)(ii) and (f).

CONTESTING RECORD PROCEDURES:

See ''EXEMPTIONS PROMULGATED FOR THE SYSTEM.'' As provided in 34 CFR 5b.11(b)(3) and (c)(1)(ii), the procedures for correction or amendment of records are not applicable to criminal and non-criminal investigative files.

RECORD ACCESS PROCEDURES:

See ''EXEMPTIONS PROMULGATED FOR THE SYSTEM.'' As provided in 34 CFR 5b.11(b)(3), (c)(1)(ii), and (f), the record access procedures are not applicable to criminal investigative files except at the discretion of the Inspector General. To the extent that the procedures may apply to criminal investigative files, they are subject to the conditions set forth at 34 CFR 5b.11(b)(3). The record access procedures are applicable to non-criminal investigative files subject to the conditions set forth at 34 CFR 5b.11(c)(1)(ii) and (f).

CONTESTING RECORD PROCEDURES:

See ''EXEMPTIONS PROMULGATED FOR THE SYSTEM.'' As provided in 34 CFR 5b.11(b)(3) and (c)(1)(ii), the procedures for correction or amendment of records are not applicable to criminal and non-criminal investigative files.

NOTIFICATION PROCEDURES:

See ''EXEMPTIONS PROMULGATED FOR THE SYSTEM.'' As provided in 34 CFR 5b.11(b)(3), (c)(1)(ii), and (f), the notification procedures are not applicable to criminal investigative files except at the discretion of the Inspector General. To the extent that the procedures may apply to criminal investigative files, they are subject to the conditions set forth at 34 CFR 5b.11(b)(3). The notification procedures are applicable to non-criminal investigative files subject to the conditions set forth at 34 CFR 5b.11(c)(1)(ii) and (f).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to the general authority in the Privacy Act in 5 U.S.C. 552a(j)(2) (criminal investigative/enforcement files), the Secretary of Education has by regulations exempted the ''Investigative Files of the Inspector General'' system of records from the following subsections of the Privacy Act:

5 U.S.C. 552a(c)(3)—access to accounting of disclosure.

5 U.S.C. 552a(c)(4)—notification to outside parties and agencies of correction or notation of dispute made in accordance with 5 U.S.C. 552a(d).

5 U.S.C. 552a(d)(1) through (4) and (f)—procedures for notification or access to, and correction or amendment of, records.

5 U.S.C. 552a(e)(1)—maintenance of only relevant and necessary information.

5 U.S.C. 552a(e)(2)—collection of information from the subject individual to the greatest extent practicable.

5 U.S.C. 552a(e)(3)—notice to an individual who is asked to provide information to the Department.

5 U.S.C. 552a(e)(4)(G) and (H)—inclusion of information in the system of records notice regarding Department procedures on notification of, access to, correction of, or amendment of records.

5 U.S.C. 552a(e)(5)—maintenance of records with requisite accuracy, relevance, timeliness, and completeness.

5 U.S.C. 552a(e)(8)—service of notice on individual if a record is made available under compulsory legal process if that process becomes a matter of public record.

5 U.S.C. 552a(g)—civil remedies for violation of the Privacy Act.

Pursuant to the general authority in the Privacy Act in 5 U.S.C. 552a(k)(2) (civil investigative files), the Secretary of Education has by regulations exempted the ''Investigative Files of the Inspector General'' system of records from the following subsections of the Privacy Act:

5 U.S.C. 552a(c)(3)—access to accounting of disclosure.

5 U.S.C. 552a(d)(1) through (4) and (f)—procedures for notification or access to, and correction or amendment of, records.

5 U.S.C. 552a(e)(1)—maintenance of only relevant and necessary information.

5 U.S.C. 552a(e)(4)(G) and (H)—inclusion of information in the system of records notice regarding Department procedures on notification of, access to, correction of, or amendment of records.

These exemptions are stated in 34 CFR 5b.11.

HISTORY:

The system of records notice entitled ''Investigative Files of the Inspector General'' (18–10–01) was published in full in the **Federal Register** on June 4, 1999 (64 FR 30151–30153), corrected on December 27, 1999 (64 FR 72406), corrected on January 30, 2002 (67 FR 4415–4417), altered on June 26, 2003 (68 FR 38153–38158), altered on June 14, 2010 (75 FR 33608–33610), and most recently altered on August 20, 2012 (77 FR 50091–50092).

APPENDIX TO 18–10–01 ADDITIONAL SYSTEM LOCATIONS:

Office of Inspector General, U.S. Department of Education, 2700 N. Central, Suite 300, Phoenix, AZ 85004.

Office of Inspector General, U.S. Department of Education, One World Trade Center, Suite 2300, Long Beach, CA 90831–0023.

Office of Inspector General, U.S. Department of Education, Cesar E. Chavez Memorial Building, 1244 Speer Boulevard, Suite 604A, Denver, CO 80204–3582.

Office of Inspector General, U.S. Department of Education, 9050 Pines Blvd., Suite 270, Pembroke Pines, FL 33024.

Office of Inspector General, U.S. Department of Education, Atlanta Federal Center, 61 Forsyth Street, Room 19T71, Atlanta, GA 30303–3104.

Office of Inspector General, U.S. Department of Education, 230 S. Dearborn Street, Suite 3964, Chicago, IL 60604.

Office of Inspector General, U.S. Department of Education, J.W. McCormack Post Office and Courthouse, 5 Post Office Square, 8th Floor, Boston, MA 02109.

Office of Inspector General, U.S. Department of Education, 339 East Liberty Street, Suite 310, Ann Arbor, MI 48104.

Office of Inspector General, U.S. Department of Education, 1010 Walnut Street, Suite 410, Kansas City, MO 64104.

Office of Inspector General, U.S. Department of Education, 32 Old Slip, 26th Floor, New York, NY 10005–2500.

Office of Inspector General, U.S. Department of Education, The Wanamaker Building, 100 Penn Square East, Suite 502, Philadelphia, PA 19107–3323.

Office of Inspector General, U.S. Department of Education, 1000 Liberty Avenue, Room 1503, Pittsburgh, PA 15222–4004.

Office of Inspector General, U.S. Department of Education, Federal Building and Courthouse, 150 Carlos Chardón Street, Room 747, San Juan, PR 00918–1721.

Office of Inspector General, U.S. Department of Education, 350 Carlos Chardón Street, Suite 235, San Juan, PR 00918.

Office of Inspector General, U.S. Department of Education, 801 Broadway, Suite C 362, Nashville, TN 37203.

Office of Inspector General, U.S. Department of Education, 1201 Elm Street, Suite 1090, Dallas, TX 75270.

[FR Doc. 2021–21283 Filed 9–29–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP21–1143–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Petition for Declaratory Order

Take notice that on September 21, 2021, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2019) and section 284.502(b)(1) of the Commission's regulations,[1] Transcontinental Gas Pipe Line Company, LLC (Transco) filed a petition requesting that the Commission issue a declaratory order: (1) Granting Transco authorization to charge market-based rates for the natural gas storage services performed at its Washington Storage Field in Louisiana; and (2) approving waivers of Sections 284.7(e) and 284.10 of the Commission's regulations, which require that natural gas companies providing Part 284 storage services charge reservation fees that recover all fixed costs based on the Straight-Fixed Variable rate design methodology. Transco also requests that the Commission grant Transco the requested authorization and waivers no later than March 1, 2022, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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 with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on October 21, 2021.

Dated: September 24, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–21264 Filed 9–29–21; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 284.502(b)(1) (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–493–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Availability of the Final Environmental Impact Statement for the Proposed; East 300 Upgrade Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the East 300 Upgrade Project, proposed by Tennessee Gas Pipeline Company, L.L.C. (Tennessee) in the above-referenced docket. Tennessee requests authorization to modify two existing compressor stations and construct one new compressor station in Pennsylvania and New Jersey to create 115 million cubic feet per day of firm transportation capacity on Tennessee's existing 300 Line for Consolidated Edison Company of New York, Inc.

The final EIS assesses the potential environmental effects of the construction and operation of the East 300 Upgrade Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding.

The final EIS responds to comments that were received on the Commission's February 19, 2021 environmental assessment (EA) and July 2, 2021 draft EIS [1] and discloses downstream greenhouse gas emissions for the project. With the exception of climate change impacts, the FERC staff concludes that approval of the proposed project, with the mitigation measures recommended in this EIS, would not result in significant environmental impacts. FERC staff continues to be unable to determine significance with regards to climate change impacts.

The final EIS incorporates the above-referenced EA, which addressed the potential environmental effects of the construction and operation of the following project facilities:

- Modifications at existing Compressor Station 321 in Susquehanna County, Pennsylvania, including the installation of one Solar Taurus 70

[1] The project's EA is available on eLibrary under accession no. 20210219–3034 and the draft EIS is available under accession no. 20210702–3037.

turbine with an International Organization for Standardization (ISO) rating of 11,107 horsepower and auxiliary facilities;

• modifications at existing Compressor Station 325 in Sussex County, New Jersey, including installation of one Solar Titan 130 turbine with an ISO rating of 20,500 horsepower and auxiliary facilities; and

• construction of the new Compressor Station 327 equipped with a single 19,000-horsepower electric-driven compressor unit and associated auxiliary facilities in Passaic County, New Jersey.

The Commission mailed a copy of the *Notice of Availability of the Final Environmental Impact Statement for the Proposed East 300 Upgrade Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search,'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP20–493). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: September 24, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–21265 Filed 9–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–11–000]

Reliability Technical Conference; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference and the Supplemental Notice of Technical Conference issued in this proceeding on March 5, 2021 and August 6, 2021 respectively, the Federal Energy Regulatory Commission (Commission) will convene its annual Commissioner-led Reliability Technical Conference on Thursday, September 30, 2021 from approximately 8:30 a.m. to 5:00 p.m. Eastern time. The purpose of this conference is to discuss policy issues related to the reliability of the Bulk-Power System. The conference will be held virtually via WebEx.

The final agenda with confirmed speakers for this event is attached. The conference will be open for the public to attend virtually, and there is no fee for attendance. Information on the technical conference will also be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov,* prior to the event. The conference will be transcribed. Transcripts of the conference will be available for a fee from Ace-Federal Reporters, Inc. (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Lodie White at *Lodie.White@ferc.gov* or (202) 502–8453. For information related to logistics, please contact Sarah McKinley at *Sarah.Mckinley@ferc.gov* or (202) 502–8368.

Dated: September 24, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–21266 Filed 9–29–21; 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 Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL21–103–000.

Applicants: SOO Green HVDC Link ProjectCo, LLC v. PJM Interconnection, L.L.C.

Description: Complaint of SOO Green HVDC Link ProjectCo, LLC v. PJM Interconnection, L.L.C.

Filed Date: 9/21/21.

Accession Number: 20210921–5137.

Comment Date: 5 p.m. ET 10/12/21.

Docket Numbers: EL21–104–000.

Applicants: Carlos H. Diaz-Rivera.

Description: Petition for Enforcement of Carlos H. Diaz-Rivera.

Filed Date: 9/22/21.

Accession Number: 20210922–5133.

Comment Date: 5 p.m. ET 10/12/21.

Docket Numbers: EL21–105–000.

Applicants: George R. Cotter.

Description: Complaint of George R Cotter, ESQ on FERC Notice of Proposed Rule Cybersecurity Incentives dated December 17, 2020.

Filed Date: 9/10/21.

Accession Number: 20210910–5156.

Comment Date: 5 p.m. ET 10/14/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–190–016; ER18–1343–011; ER10–2034–007.

Applicants: Duke Energy Indiana, Inc., Carolina Solar Power, LLC, Duke Energy Renewable Services, LLC.

Description: Third Amendment to December 18, 2020 Triennial Market Power Analysis for Central Region of Duke Companies.

Filed Date: 9/23/21.

Accession Number: 20210923–5141.

Comment Date: 5 p.m. ET 10/7/21.

Docket Numbers: ER21–486–002.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: NYISO Notice of Effective Date for TCC Credit requirement to be effective 10/12/2021.

Filed Date: 9/24/21.

Accession Number: 20210924–5094.

Comment Date: 5 p.m. ET 10/15/21.

Docket Numbers: ER21–2652–001.

Applicants: Caddo Wind, LLC.

Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 10/11/2021.

Filed Date: 9/23/21.

Accession Number: 20210923–5134.
Comment Date: 5 p.m. ET 10/14/21.

Docket Numbers: ER21–2767–001.
Applicants: Skipjack Solar Center, LLC.
Description: Tariff Amendment: Skipjack Solar Center, LLC MBR Supplement to be effective 10/1/2021.
Filed Date: 9/23/21.
Accession Number: 20210923–5133.
Comment Date: 5 p.m. ET 10/14/21.

Docket Numbers: ER21–2928–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA No. 6182; Queue No. AD2–163 to be effective 8/25/2021.
Filed Date: 9/24/21.
Accession Number: 20210924–5014.
Comment Date: 5 p.m. ET 10/15/21.

Docket Numbers: ER21–2929–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Submission of Revisions to Western Joint Dispatch Agreements to be effective 10/1/2021.
Filed Date: 9/24/21.
Accession Number: 20210924–5041.
Comment Date: 5 p.m. ET 10/15/21.

Docket Numbers: ER21–2930–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Tariff Amendment: 2021–09–24 NSP–MMPA–Meter Upgrade–CIAC–677–NOC to be effective 9/25/2021.
Filed Date: 9/24/21.
Accession Number: 20210924–5068.
Comment Date: 5 p.m. ET 10/15/21.

Docket Numbers: ER21–2931–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–09–24_SA 3170 Crossett Solar—EAI 1st Rev GIA (J680) to be effective 9/7/2021.
Filed Date: 9/24/21.
Accession Number: 20210924–5072.
Comment Date: 5 p.m. ET 10/15/21.

Docket Numbers: ER21–2932–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2021–09–24 Transferred Frequency Response Agmt—BPA to be effective 12/1/2021.
Filed Date: 9/24/21.
Accession Number: 20210924–5087.
Comment Date: 5 p.m. ET 10/15/21.

Docket Numbers: ER21–2933–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii: MAIT submits One ECSA, SA No. 6049 to be effective 11/24/2021.
Filed Date: 9/24/21.
Accession Number: 20210924–5112.
Comment Date: 5 p.m. ET 10/15/21.

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: September 24, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–21298 Filed 9–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–497–000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 16, 2021Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (NGA) and Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, for authorization to construct, own, and operate a new receipt metering and regulating station along its existing Line 41 Pipeline and an associated permanent access road in Beauregard Parish, Louisiana. Specifically, Texas Eastern proposes to install facilities for the receipt of up to 500 million cubic feet per day of natural gas from the Acadian Gas Pipeline System. Texas Eastern states that the proposed activities will have no impact on the certificated capacity of its system, and there will be no abandonment or reduction in service to any customer of Texas Eastern as a result of the project, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this prior notice request should be directed to Arthur Diestel, Director of Regulatory Affairs, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642 at (713) 627–5116 or at *arthur.diestel@enbridge.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on November 23, 2021. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is November 23, 2021. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is November 23, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before November 23, 2021. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP21–497–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's *eFiling* feature, which is located on the Commission's website (*www.ferc.gov)* under the link to *Documents and Filings*. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below.[7] Your submission must reference the Project docket number CP21–497–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Protests and motions to intervene must be served on the applicant either by mail at: 1001 Louisiana Street, Houston, Texas 77002 or email (with a link to the document) at *debbie_kalisek@kindermorgan.com*. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp*.

Dated: September 24, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–21269 Filed 9–29–21; 8:45 am]

BILLING CODE 6717–01–P

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

[7] Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14513–003]

Idaho Irrigation District and New Sweden Irrigation District; Notice of Intent To Prepare an Environmental Assessment

On September 29, 2020, the Idaho Irrigation District and New Sweden Irrigation District filed an application for an original license to construct and operate the 2.5-megawatt County Line Road Hydroelectric Project No. 14513 (project). The proposed project would be located on the Snake River in Bonneville and Jefferson Counties, Idaho. The project would not occupy federal lands.

In accordance with the Commission's regulations, on July 14, 2021, Commission staff issued a notice that the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that licensing the project would constitute a major federal

action significantly affecting the quality of the human environment. Therefore, staff intends to prepare a draft and final Environmental Assessment (EA) on the application to license the project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues draft EA	April 2022.[1]
Comments on draft EA	May 2022.
Commission issues final EA	October 2022.

Any questions regarding this notice may be directed to Matt Cutlip at (503) 552–2762 or *matt.cutlip@ferc.gov*.

Dated: September 24, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–21267 Filed 9–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP19–502–000; CP19–502–001]

Commonwealth LNG, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Commonwealth LNG Project, Request for Comments on Environmental Issues, and Revised Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Commonwealth LNG Project (Project) involving construction and operation of facilities by Commonwealth LNG, LLC (Commonwealth LNG) in Cameron Parish, Louisiana. The Commission will use this EIS in its decision-making process to determine whether the Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of an authorization. This gathering of public input is referred to as ''scoping.'' By notice issued on February 22, 2018, in Docket No. PF17–8, the Commission opened a scoping period during the pre-filing review process for the Project; and staff intends to prepare an EIS that will address the concerns raised during that previous scoping period as well as comments received in response to this notice based on Commonwealth LNG's Project application filing, as supplemented, in Docket No. CP19–502. Therefore, the Commission requests comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on October 25, 2021. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

As mentioned above, the Commission previously opened a scoping period which expired on March 26, 2018. All substantive written and oral comments provided during the previous scoping period will be addressed in the EIS. Therefore, if you submitted comments on this Project to the Commission during the previous scoping period, you do not need to file those comments again.

Commonwealth LNG provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket numbers (CP19–502–000; CP19–502–001) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Commonwealth LNG proposes to construct and operate a new liquefied natural gas (LNG) export terminal and accompanying natural gas pipeline on the west side of the Calcasieu Ship Channel at its entrance to the Gulf of Mexico. The LNG export terminal would consist of six natural gas liquefaction trains (with nominal liquefaction and production capacities of 1.4 million metric tonnes per annum each), six LNG storage tanks (with storage capacities of 50,000 cubic meters each), and one marine berth capable of accommodating LNG carriers with capacities up to 216,000 cubic meters. Commonwealth LNG would construct a

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the County Line Road Hydroelectric Project. Therefore, in accordance with CEQ's regulations, the EA must be issued within 1 year of the issuance date of this notice.

42-inch-diameter natural gas pipeline from the LNG export terminal, extending 3.0 miles north to interconnect with existing natural gas pipelines within Cameron Parish. The proposed Project would require about 182 acres to construct and would occupy about 107 acres during operation.

Commonwealth states that the purpose of the proposed Project is to liquefy and export to foreign markets, domestically produced natural gas sourced from the existing interstate and intrastate pipeline systems of Kinetica Partners, LLC and EnLink Bridgeline Holdings LP, respectively, in southwest Louisiana.

The general location of the Project is shown in appendix 1.[1]

Based on the previous pre-filing review and a review of Commonwealth LNG's filed proposal, Commission staff have identified a few expected impacts that deserve attention in the EIS. These include wetland impacts, associated threatened and endangered species impacts, and increased greenhouse gas emissions.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics and environmental justice;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action. Alternatives currently under consideration include:

- The no-action alternative, meaning the Project is not implemented;
- use of other existing and proposed LNG terminals to provide the liquefaction capabilities proposed by Commonwealth LNG; and
- alternative locations to construct the Project.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project purpose, are technically and economically feasible, and avoid or lessen environmental impact.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission initiated section 106 consultation for the Project in the notice issued on February 22, 2018, with the applicable State Historic Preservation Officer, and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.[3] This current notice is a continuation of section 106 consultation for the Project. The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Schedule for Environmental Review

On September 3, 2019, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. On October 15, 2019, the Commission issued a notice of schedule for environmental review of the Project, which identified October 2, 2020 as the final EIS issuance date. However, the Commission suspended the environmental review schedule for the Project on March 16, 2020, pending adequate responses from Commonwealth LNG to Commission staff data requests and an official interpretation from the U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration (PHMSA) pertaining to Commonwealth LNG's proposed LNG storage tank design. On June 8, 2021, Commonwealth LNG filed a limited amendment to its Natural Gas Act Section 3 Application to modify the proposed LNG storage tank designs and capacities so as not to require an interpretation from PHMSA. Commonwealth LNG has filed the majority of responses to the Commission staff's data requests to-date and have stated that all outstanding responses will be filed in 2021. As a result, Commission staff have revised the schedule for issuance of the final EIS, based on an issuance of the draft EIS in March 2022.

Issuance of Notice of Availability of the final EIS: September 9, 2022
90-day Federal Authorization Decision Deadline: December 8, 2022

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy their NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

ENVIRONMENTAL PERMITS, APPROVALS, CLEARANCES, AND CONSULTATIONS

Agency	Permit, approval, or consultation
Federal:	
Federal Energy Regulatory Commission	Natural Gas Act Section 3.
U.S. Department of Energy/Office of Fossil Energy	Natural Gas Act Section 3, Amendment of Free Trade Agreement Authorization and Non-Free Trade Agreement Authorization.
U.S. Army Corps of Engineers	Clean Water Act Section 404/Rivers & Harbors Act Section 10.
	Section 408 (Section 14 Rivers & Harbors Act).
U.S. Army Corps of Engineers	Programmatic General Permit—Category 1 for Geotechnical Investigation.
U.S. Coast Guard	Letter of Intent and Preliminary Waterway Suitability Assessment.
	Follow-on Waterway Suitability Assessment
	Letter of Recommendation.
U.S. Fish & Wildlife Service	Section 7 of the Endangered Species Act.
	Migratory Bird Treaty Act.
	Bald and Golden Eagle Protection Act.
National Marine Fisheries Service, Protected Resources Division	Section 7 of the Endangered Species Act.
National Marine Fisheries Service, Habitat Conservation Division	Magnuson-Stevens Fishery Management and Conservation Act Essential Fish Habitat Consultation.
National Marine Fisheries Service, Office of Protected Resources	Marine Mammal Protection Act.
Federal Aviation Administration	Notice of Proposed Construction.
Federal Emergency Management Agency	Permit for floodplain development.
U.S. Department of Transportation	Pre-construction Notice.
State of Louisiana:	
Louisiana Department of Natural Resources, Office of Coastal Management.	Coastal Use Permit Coastal Zone Management Act Consistency Determination.
Louisiana Department of Environmental Quality—Air Quality Division.	Air Emissions Permit (Title V and Prevention of Significant Deterioration).
Louisiana Department of Environmental Quality—Water Quality Division.	Section 401 Clean Water Act Water Quality Certification.
	Louisiana Pollutant Discharge Elimination System General Permit LAG670000—Hydrostatic Test and Vessel Testing Wastewater.
	Louisiana Pollutant Discharge Elimination System General Permit LAR050000—Multi-Sector General Stormwater Permit.
Louisiana Department of Wildlife and Fisheries	Threatened and Endangered Species Consultation.
	License to Dredge.
	Oyster lease consultation.
Louisiana Department of Culture Recreation and Tourism/State Historic Preservation Officer.	Section 106 National Historic Preservation Act Consultation.
Louisiana Department of Transportation and Development	Review of road easements, modifications to state highways, traffic safety.
Louisiana Office of State Lands	State Water Bottom Lease.
Cameron Parish:	
Cameron Parish Police Jury	Development Permit.
	Coastal Use Letter of No Objection.
Coastal Protection and Restoration Authority	Letter of No Impact.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the Project which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; federally recognized Indian tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP19–502–000 or 001 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP19–502). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: September 24, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–21268 Filed 9–29–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0928; FRL–9102–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Fuel Use Requirements for Great Lake Steamships (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Fuel Use Requirements for Great Lakes Steamships (EPA ICR Number 2458.05, OMB Control Number 2060–0679) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is an extension of the ICR, which is currently approved through November 30, 2021. Public comments were previously requested via the **Federal Register** on March 19, 2021, during a 60-day comment period. This notice allows an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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 November 1, 2021.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2011–0928 online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Alan Stout, Office of Transportation and Air Quality, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105; 734–214–4805; *stout.alan@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents that explain in detail the information EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA adopted requirements for marine vessels operating in and around U.S. territorial waters to use reduced-sulfur diesel fuel. This requirement applies to steamships that are converted to run on diesel engines. A regulatory provision allows vessel owners to qualify for a waiver from the fuel-use requirements for a defined period for such converted vessels. One condition of the exemption from the fuel standard is that engines meet current emission standards. EPA uses the information to oversee compliance with regulatory requirements, including communicating with affected companies and answering questions from the public or other industry participants regarding the waiver in question. The EPA Tier 4 standards now apply for engines installed on U.S. vessels. These standards generally require installation of selective catalytic reduction technology, which substantially increases the complexity of replacing the steam powerplant with one or more engines. We therefore don't expect anyone to use the steamship exemption.

Form Numbers: None.

Respondents/affected entities: Respondents are those who are using the waiver provisions of 40 CFR 1043.95(b).

Respondent's obligation to respond: Required to obtain a benefit (40 CFR 1043.95).

Estimated number of respondents: 0.

Frequency of response: One time for a new notification.

Total estimated burden: 0 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $0.

Changes in estimates: The burden estimate is unchanged from the current estimate in the total estimated respondent burden currently approved by OMB. Since the IMO Tier III NO_X standards now apply for engines installed on U.S. vessels, we don't expect anyone to use the steamship exemption.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–21287 Filed 9–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0971; FRL–9103–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Aerosol Coatings (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), National Volatile Organic Compound Emission Standards for Aerosol Coatings (EPA ICR Number 2289.05, OMB Control Number 2060–0617), to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2021. Public comments were previously requested, via the **Federal Register**, on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently-valid OMB control number.

DATES: Additional comments may be submitted on or before November 1, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2006–0971 online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at: *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The EPA is required under section 183(e) of the Clean Air Act (CAA) to regulate volatile organic compound (VOC) emissions from the use of consumer and commercial products. Pursuant to CAA section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Aerosol coatings are included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart E. The reports required under the standards enable the EPA to identify coating formulations manufactured, imported, or distributed in the United States, and to determine the product-weighted reactivity. The ICR addresses the burden for activities conducted in 3-year increments after promulgation of the National VOC Emission Standards for Aerosol Coatings. Regulated entities read instructions to determine how they are affected by the rule. They are required to submit initial notifications when an aerosol coating is manufactured and notification of changes in the initial report, to report formulation data and exemptions claimed, and to maintain records. In addition, regulated entities are required to submit triennial reports that include formulation data and VOC usage.

Form Numbers: None.

Respondents/affected entities: M manufacturers, distributors, and importers of aerosol coatings. These regulated entities fall within the North American Industry Classification System (NAICS) Code 32551, ''Paint and Coating Manufacturing,'' and NAICS Code 325998, ''All Other Miscellaneous Chemical Production and Preparation Manufacturing.''

Respondent's obligation to respond: Mandatory (40 CFR part 59, Subpart E).

Estimated number of respondents: 67 (total).

Frequency of response: Annual, triennial.

Total estimated burden: 13,600 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $973,000 (per year), which includes zero dollars in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a small increase in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This situation is due to two considerations. The regulations have not changed over the past three years and are not anticipated to change over the next three years. The estimated growth rate for this industry is one new respondent per year, leading to a slow increase in burden. We have added 1 hour of burden for existing sources to re-familiarize themselves with the rule each year and adjusted the respondent burden to account for managerial hours as 5% of technical hours and clerical hours as 10% of technical hours for industry respondents, which reflects the EPA standard estimates of burden by labor category.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–21286 Filed 9–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2014–0859; FRL–9002–01–ORD]

Supplement to the 2019 Integrated Science Assessment for Particulate Matter (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a draft document titled, ''Supplement to the 2019 Integrated Science Assessment for Particulate Matter (External Review Draft)'' (EPA/600/R–21/198). The document was prepared by the Center for Public Health and Environmental Assessment (CPHEA) within EPA's Office of Research and Development (ORD) as part of the reconsideration of the 2020 National Ambient Air Quality Standard (NAAQS) for particulate matter (PM). The Supplement represents a targeted review of peer-reviewed studies published since the literature cutoff date (*i.e.,* ~January 2018) of the 2019 Integrated Science Assessment for Particulate Matter (PM ISA). The Supplement and the 2019 p.m. ISA provide the scientific basis for EPA's decisions, in conjunction with additional technical and policy assessments, for the reconsideration of the current NAAQS and the appropriateness of possible alternative standards. EPA is releasing this draft document to seek review by the Clean Air Scientific Advisory Committee (CASAC) and the public. In addition, the date and location of a public meeting for CASAC review of this document will be specified in a separate **Federal Register** document. This draft document is not final and it does not

represent, and should not be construed to represent, any final Agency policy or views. When revising the document, EPA will consider any public comments submitted during the public comment period specified in this notice.

DATES: Comments must be received on or before November 29, 2021.

ADDRESSES: The ''Supplement to the 2019 Integrated Science Assessment for Particulate Matter (External Review Draft)'' will be available primarily via the internet on EPA's Integrated Science Assessment Particulate Matter page at *https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter* or the public docket at *http://www.regulations.gov,* Docket ID: EPA–HQ–ORD–2014–0859. A limited number of CD–ROM copies will be available. Contact Ms. Christine Alvarez by phone: 919–541–3881; fax: 919–541–5078; or email: *alvarez.christine@epa.gov* to request a CD–ROM, and please provide your name, your mailing address, and the document title, ''Integrated Science Assessment for Particulate Matter'' to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; phone: 202–566–1752; fax: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information, contact Mr. Jason Sacks, CPHEA; phone: 919–541–9729; fax: 919–541–1818; or email: *sacks.jason@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air . . .'' Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires review every five years and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also required to review and, if appropriate, revise the NAAQS, based on the revised air quality criteria (for more information on the NAAQS review process, see *http://www.epa.gov/ttn/naaqs/review.html*).

PM is one of six criteria pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an ISA (formerly called an Air Quality Criteria Document). The ISA, and this Supplement, provide the scientific basis for EPA's decisions, in conjunction with additional technical and policy assessments, on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of the EPA's air quality criteria.

On December 3, 2014 (79 FR 71764), EPA formally initiated its current review of the air quality criteria for the health and welfare effects of particulate matter and the primary (health-based) and secondary (welfare-based) NAAQS, requesting the submission of recent scientific information on specified topics. EPA conducted a workshop from February 9 to 11, 2015 to gather input from invited scientific experts, both internal and external to EPA, as well as from the public, regarding key science and policy issues relevant to the review of the primary and secondary NAAQS (79 FR 71764). These science and policy issues were incorporated into EPA's ''Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter,'' which was available for public comment (81 FR 22977) and discussion by the CASAC via publicly accessible teleconference consultation (81 FR 13362). The ''Final Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter'' was released December 6, 2016 (81 FR 87933).

Subsequent webinar workshops were held on June 9, 13, 20, and 22, 2016, to discuss initial draft materials prepared in the development of the particulate matter ISA with invited EPA and external scientific experts (81 FR 29262). The input received during these webinar workshops aided in the development of the materials presented in the ''Integrated Science Assessment for Particulate Matter (External Review Draft), which was released on October 23, 2018'' (83 FR 53471), and is available at: *https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=341593.* The CASAC met at a public meeting on December 12—13, 2018 (83 FR 55529), to review the draft PM ISA. A public teleconference was then held on March 28, 2019 for CASAC to review their draft letter to the Administrator on the draft ISA. This meeting was announced in the **Federal Register** on March 8, 2019 (84 FR 8523). Subsequently, on April 11, 2019, the CASAC provided a letter of their review to the Administrator of the EPA, available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/6CBCBBC3025E13B4852583D90047B352/$File/EPA-CASAC-19-002+.pdf.* The letter from the CASAC, as well as public comments received on the draft PM ISA, can be found in Docket ID No. EPA–HQ–ORD–2014–0859.

The Administrator responded to the CASAC's letter on the External Review Draft of the PM ISA on July 25, 2019, and is available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/6CBCBBC3025E13B4852583D90047B352/$File/EPA-CASAC-19-002_Response.pdf.* The PM ISA was finalized on December 31, 2019, and its availability announced in a January 27, 2020 **Federal Register** document (85 FR 4655). On December 7, 2020, after reviewing the most recent available scientific evidence and technical information, and consulting with the Agency's independent scientific advisors, EPA announced its decision to retain, without revision, the existing primary (health-based) and secondary (welfare-based) PM NAAQS.

On June 10, 2021, EPA announced it will reconsider the December 2020 decision to retain the PM NAAQS and as part of this process develop a supplement to the 2019 Final Integrated Science Assessment (ISA), available at: *https://www.epa.gov/newsreleases/epa-reexamine-health-standards-harmful-soot-previous-administration-left-unchanged.*

The ''Supplement to the 2019 Integrated Science Assessment for Particulate Matter (External Review Draft)'' will be discussed at a public meeting for review by CASAC. In addition to the public comment period announced in this document, the public will have an opportunity to address CASAC at this meeting. A separate **Federal Register** document will inform the public of the exact date and time of the CASAC meeting and of the procedures for public participation.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2014–0859, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744. Due to COVID–19, there may be a delay in processing comments submitted by fax.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752.

Note: The EPA Docket Center and Reading Room may be closed to public visitors to reduce the risk of transmitting COVID–19. Docket Center staff will continue to provide remote customer service via email, phone, and webform. The public can submit comments via *www.Regulations.gov* or email. No hand deliveries are currently being accepted.

The EPA Docket Center and Reading Room is currently in the reopening process. Visitors may be considered on an exception basis. Visitors must complete docket material requests in advance and then make an appointment to retrieve the material. Visitors will be allowed entrance to the Reading Room by appointment only, and no walk-ins will be allowed.

The EPA continues to monitor information carefully and continuously from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2014–0859. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *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. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. 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 EPA's public docket visit the EPA Docket Center homepage at *http://www2.epa.gov/dockets.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically on *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Timothy Watkins,

Acting Director, Center for Public Health and Environmental Assessment.

[FR Doc. 2021–20504 Filed 9–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2021–0608; FRL–9080–01–OLEM]

Hazardous Waste Electronic Manifest System (e-Manifest); Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of virtual public meeting.

SUMMARY: The Environmental Protection Agency (EPA) will host virtual public meetings to discuss how to increase adoption of electronic manifests and solicit feedback from stakeholders. The agenda for both meetings will be identical and all stakeholders are encouraged to attend one of the meetings.

DATES: The meetings will be held on October 27, 2021, and November 3, 2021, from approximately 1:00 p.m.–5:00 p.m. EST. Additional public meetings may be added. Please refer to the e-Manifest website at *https://www.epa.gov/e-manifest/electronic-manifest-public-meetings.*

ADDRESSES: The public meetings will be conducted virtually. Registration is required to attend and participate during these meetings. EPA can accommodate 100 attendees at each meeting and may hold additional virtual meetings, if needed. Please refer to the e-Manifest website at *https://www.epa.gov/e-manifest/electronic-manifest-public-meetings* for information on how to register.

Comments. Oral comments will be accepted throughout each of the public meetings. Written comments will be accepted prior to and after the public meetings. Any written comments should be submitted on or before December 30, 2021, and should be submitted in the public docket under docket ID number EPA–HQ–OLEM–2021–0608 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Resource Conservation and Recovery, Docket No. EPA–HQ–OLEM–2021–0608, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Comments received may be posted without change to *https://www.regulations.gov/* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. 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.*

Special accommodations. For information on access or services for

individuals with disabilities, or to request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least ten (10) days prior to the meeting to give the EPA as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: Tess Fields, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, email: *fields.tess@epa.gov, phone (before October 31, 2021): 703–605–0509, phone (after October 31, 2021): 202–566–0328.*

SUPPLEMENTARY INFORMATION: These meetings will be open to the public. The full agenda and meeting materials will be available in the docket for the meeting and on the e-Manifest website at *https://www.epa.gov/e-manifest/electronic-manifest-public-meetings.* The public meetings will be conducted virtually, and registration is required to attend and participate. Registration instructions will be posted on the e-Manifest website at *https://www.epa.gov/e-manifest/electronic-manifest-public-meetings.* If EPA needs to make subsequent changes to this meeting, EPA will post future notices to its e-Manifest website. EPA strongly encourages the public to refer to the e-Manifest website for the latest meeting information, as sudden changes may be necessary.

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of particular interest to persons who are or may be subject to the Hazardous Waste Electronic Manifest Establishment (e-Manifest) Act.

B. Public Participation

You may participate in this meeting by providing public comments via the instructions in this notice. Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2021–0608, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* 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 (*e.g.,* 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.*

1. Written comments. EPA encourages the electronic submission of written comments into Docket ID No. EPA–HQ–OLEM–2021–0608 at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section, on or before December 30, 2021, to provide the e-Manifest program the time necessary to consider and review the written comments.

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.* The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

2. Oral comments. Oral comments will be accepted throughout each of the public meetings.

C. Purpose of the Public Meeting

The EPA will host virtual public meetings to discuss how to increase adoption of electronic manifests and solicit feedback from stakeholders.

EPA launched the e-Manifest system on June 30, 2018. e-Manifest provides those persons required to use a Resource Conservation and Recovery Act (RCRA) manifest under either federal or state law the option of using electronic manifests to track shipments of hazardous waste and to meet certain RCRA requirements. By enabling the transition from a paper-intensive process to an electronic system, EPA estimates e-Manifest will ultimately save state and industry users more than $50 million annually, once electronic manifests are widely adopted.

Since system inception through August 31, 2021, EPA has received roughly eighteen thousand electronic manifests (both fully electronic and hybrid manifests) out of a total of approximately six million manifests. Electronic manifests thus represent less than a half of a percent of manifests received by EPA. EPA seeks to dramatically increase this percentage. In June 2019, EPA consulted the Hazardous Waste Electronic Manifest System Advisory Board (e-Manifest Advisory Board) to better understand the barriers to using electronic manifests and to identify actions the Agency can take to improve implementation.[1] The e-Manifest Advisory Board, in their meeting minutes issued to the Agency on September 23, 2019, identified numerous challenges for generators and transporters in using the current electronic manifest process and made several recommendations to the Agency on overcoming these challenges.[2]

In April 2020, EPA consulted the e-Manifest Advisory Board on options for increasing use of electronic manifests, specifically regarding the Agency's proposal to reengineer electronic signatures for generators and transporters. This also included the Agency's proposed position that requirements under EPA's Cross-Media Electronic Reporting Rule (CROMERR) would only apply to electronic signatures for receiving facilities when submitting the final, signed manifest to EPA. Based on the e-Manifest Advisory Board's feedback, the Agency confirmed its position in its response to the e-Manifest Advisory Board issued in October 2020.[3] The Agency subsequently implemented a new ''Quick Sign'' feature in e-Manifest for generators, transporters, and initial electronic signatures by the receiving facility.

In its October 2020 response to the e-Manifest Advisory Board, the Agency acknowledged that the new ''Quick Sign'' feature was not expected to significantly increase adoption of electronic manifests. Therefore, EPA committed to hold additional public meetings with stakeholders to discuss the feasibility of further options for

[1] The Hazardous Waste Electronic Manifest System Advisory Board is established in accordance with the provisions of the Hazardous Waste Electronic Manifest Establishment Act, 42 U.S.C. 6939g, and the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

[2] Background materials, final meeting minutes, and the Agency response for the June 2019 e-Manifest Advisory Board public meeting can be located at *http://www.regulations.gov* Docket no. EPA–HQ–OLEM–2019–0194.

[3] Background materials, final meeting minutes, and the Agency response for the April 2020 e-Manifest Advisory Board public meeting can be located at *http://www.regulations.gov* Docket no. EPA–HQ–OLEM–2020–0075.

subsequent consultation by the e-Manifest Advisory Board.

Therefore, the purpose of the public meetings announced today is to engage stakeholders in discussion regarding how to increase industry adoption of electronic manifests. The agenda for both meetings will be identical and all stakeholders are encouraged to attend one of the meetings. These meetings are expected to include discussion regarding:

(1) Current electronic manifest functionality and workflow;

(2) Potential option to allow receiving facilities to upload electronic signatures to EPA;

(3) Other potential options, including options that may require policy or regulatory change.

EPA intends to use information obtained from these public meetings to inform future options for consideration by the e-Manifest Advisory Board.

Dated: September 24, 2021.

Elizabeth Shaw,

Acting Director, Office of Resource Conservation and Recovery, Office of Land and Emergency Management.

[FR Doc. 2021–21231 Filed 9–29–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0463, FR ID 50435]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 29, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of internet Protocol (IP) Captioned Telephone Service, CG Docket Nos. 03–123, 10–51, and 13–24.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Individuals or household; State, Local and Tribal Government.

Number of Respondents and Responses: 5,072 respondents; 7,988 responses.

Estimated Time per Response: 0.1 hours (6 minutes) to 80 hours.

Frequency of Response: Annually, semi-annually, eight times a year, monthly, on occasion, one-time, and quarterly reporting requirements; Recordkeeping and Third-Party Disclosure requirements.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, in Title IV of the Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327, 366–69.

Total Annual Burden: 14,524 hours.

Total Annual Cost: $291,700.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries, and Requests for Dispute Assistance,'' in the **Federal Register** on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. It may be reviewed at *https://www.fcc.gov/general/privacy-act-information#pia.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: On December 21, 2001, the Commission released the *2001 TRS Cost Recovery Order,* document FCC 01–371, published at 67 FR 4203, January 29, 2002, in which the Commission, among other things:

(1) Required internet-based TRS providers to submit certain projected TRS-related cost and demand data to the TRS Fund administrator to be used to calculate the rate; and

(2) directed the TRS Fund administrator to expand its data collection forms accordingly.

In 2003, the Commission released the *2003 Second Improved TRS Order,* published at 68 FR 50973, August 25, 2003, which among other things required that TRS providers offer certain local exchange carrier (LEC)-based improved services and features where technologically feasible, including a speed dialing requirement which may entail voluntary recordkeeping for TRS providers to maintain a list of telephone numbers. *See also* 47 CFR 64.604(a)(3)(vi)(B).

In 2007, the Commission released the *Section 225/255 VoIP Report and Order,* published at 72 FR 43546, August 6, 2007, extending the disability access requirements that apply to telecommunications service providers and equipment manufacturers under 47 U.S.C. 225, 255 to interconnected voice over internet protocol (VoIP) service providers and equipment manufacturers. As a result, under rules implementing section 225 of the Act, interconnected VoIP service providers are required to publicize information about telecommunications relay services (TRS) and 711 abbreviated dialing access to TRS. *See also* 47 CFR 64.604(c)(3).

In 2007, the Commission also released the *2007 Cost Recovery Report and Order and Declaratory Ruling,* published at 73 FR 3197, January 17, 2008, in which the Commission:

(1) Adopted a new cost recovery methodology for interstate traditional TRS, interstate speech-to-speech service (STS), captioned telephone service (CTS), and Internet Protocol captioned telephone service (IP CTS) based on the Multi-state Average Rate Structure (MARS) plan, under which interstate TRS compensation rates are determined by weighted average of the states' intrastate compensation rates, and which includes for STS additional compensation approved by the Commission for STS outreach;

(2) adopted a cost recovery methodology for Internet Protocol (IP) Relay based on a price cap like methodology;

(3) adopted a cost recovery methodology for video relay service (VRS) that adopted tiered rates based on call volume;

(4) clarified the nature and extent that certain categories of costs are compensable from the Fund; and

(5) addressed certain issues concerning the management and oversight of the Fund, including prohibiting financial incentives offered to consumers to make relay calls.

The *2007 TRS Cost Recovery Order* requires that state relay administrators and TRS providers submit to the TRS Fund administrator the following information annually, for intrastate traditional TRS, STS, and CTS:

(1) The per-minute compensation rate(s) and other compensation received for the provision of TRS;

(2) whether the rate applies to session minutes or conversation minutes, which are a subset of session minutes;

(3) the number of intrastate session minutes; and

(4) the number of intrastate conversation minutes.

Also, STS providers must file a report annually with the TRS Fund administrator and the Commission on their specific outreach efforts directly attributable to the additional compensation approved by the Commission for STS outreach.

In 2011, to help prevent waste, fraud, and abuse, the Commission adopted three VRS orders to curtail these harmful practices. Each of these orders (collectively, the *2011 VRS Orders*) included information collection requirements.

On April 6, 2011, in document FCC 11–54, the Commission released the *2011 Fraud Prevention Order,* published at 76 FR 30841, May 27, 2011, which included several measures designed to eliminate the waste, fraud and abuse, while ensuring that VRS remains a viable and a valuable communication tool for Americans who use it on a daily basis.

On July 28, 2011, in document FCC 11–118 the Commission released the *VRS Certification Order,* published at 76 FR 47469, August 5, 2011, amending its rules for certifying internet-based TRS providers as eligible for payment from the Interstate TRS Fund (Fund) for their provision of internet-based TRS.

On October 17, 2011, in document FCC 11–155, the Commission released the *Second VRS Certification Order,* published at 76 FR 67070, October 31, 2011, addressing three petitions related to the *VRS Certification Order* by revising the burdens contained in the requirements for the submission of documentation of a provider's VRS equipment and technologies and the submission of documentation regarding sponsorship arrangements.

The following are the final information collection requirements contained in the *2011 VRS Orders:*

(1) The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a TRS provider shall certify, under penalty of perjury, that: (1) Minutes submitted to the Interstate TRS Fund (Fund) administrator for compensation were handled in compliance with the Commission's rules and are not the result of impermissible financial incentives to generate calls, and (2) cost and demand data submitted to the Fund administrator related to the determination of compensation rates are true and correct.

(2) VRS providers shall: (a) Submit to the Commission and the TRS Fund administrator a call center report twice a year and (b) notify the Commission and the TRS Fund administrator at least 30 days prior to any change to their call centers' locations.

(3) VRS providers shall submit detailed call data records (CDRs) and speed of answer compliance data to the Fund administrator.

(4) TRS providers shall use an automated record keeping system to capture the CDRs and shall submit such data electronically in standardized form to the TRS Fund administrator.

(5) internet-based TRS providers shall retain the CDRs that are used to support payment claims submitted to the Fund administrator for a minimum of five years, in an electronic format.

(6) VRS providers shall: (a) Maintain copies of all third-party contracts or agreements and make them available to the Commission and the TRS Fund administrator upon request; and (b) describe all agreements in connection with marketing and outreach activities in their annual submissions to the TRS Fund administrator.

(7) TRS providers shall provide information about their TRS whistleblower protections to all employees and contractors, in writing.

In 2018, the Commission released the *IP CTS Modernization Order,* published at 83 FR 30082, June 27, 2018, in which the Commission:

(1) Determined that it would transition the methodology for IP CTS cost recovery from the MARS plan to cost-based rates and adopted interim rates; and

(2) added two cost reporting requirements for IP CTS providers: (i) In annual cost data filings and supplementary information provided to the TRS Fund administrator, IP CTS providers that contract for the supply of services used in the provision of TRS, shall include information about payments under such contracts, classified according to the substantive cost categories specified by the TRS Fund administrator; and (ii) in the course of an audit or otherwise upon demand, IP CTS providers must make available any relevant documentation. 47 CFR 64.604(c)(5)(iii)(D)(1), (6).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–21271 Filed 9–29–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 50436]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 29, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: XXXX–XXXX.

Title: Section 20.23(b)(1), (3)–(5), (7); (c)(1)–(2), (3), (3)(iii)–(iv), (4)(i)–(ii), (v); and (d), Contraband wireless devices in correctional facilities.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities, and state, local or tribal governments.

Estimated Number of Respondents and Responses: 531 respondents and 16,389 responses.

Estimated Time per Response: 1–10 hours.

Frequency of Response: One-time application and self-certification response, one-time DCFO authorization request response, on occasion qualifying request response, on occasion reversal response, recordkeeping requirement, third party notification requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the currently approved information collection is contained in sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332.

Estimated Total Annual Burden: 142,568 hours.

Total Annual Costs: No costs.

Nature and Extent of Confidentiality: Certain information collected during the CIS application and certification process will be treated as confidential from public inspection. To the extent necessary, respondents may request confidential treatment of information collected. *See* 47 CFR 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On July 13, 2021, the Commission released a Second Report and Order and Second Further Notice of Proposed Rulemaking, Promoting Technological Solutions to Combat Contraband Wireless Devices in Correctional Facilities, GN Docket No. 13–111, in which the Commission took further steps to facilitate the deployment and viability of technological solutions used to combat contraband wireless devices in correctional facilities. In the Second Report and Order, the Commission adopted a framework requiring the disabling of contraband wireless devices detected in correctional facilities upon satisfaction of certain criteria. The Commission further addressed issues involving oversight, wireless provider liability, and treatment of 911 calls. Finally, the Commission adopted rules requiring advance notice of certain wireless provider network changes to promote and maintain contraband interdiction system effectiveness.

In establishing rules requiring wireless providers to disable contraband wireless devices in correctional facilities and adopting a framework to enable designated correctional facility officials (DCFOs) relying on an authorized Contraband Interdiction System (CIS) to submit qualifying requests to wireless providers to disable contraband wireless devices in qualifying correctional facilities, the Commission found that a rules-based process will provide a valuable additional tool for departments of corrections to address contraband wireless device use. The framework includes a two-phase authorization process: (1) CIS applicants will submit applications to the Wireless Telecommunications Bureau (Bureau) describing the legal and technical qualifications of the systems; and (2) CIS applicants will perform on-site testing of approved CISs at individual correctional facilities and file a self-certification with the Commission. After both phases are complete, DCFOs will be authorized to submit qualifying requests to wireless providers to disable contraband devices using approved CISs at each correctional facility. In addition, the Commission adopted rules requiring wireless providers to notify certain types of CIS operators of major technical changes to ensure that CIS effectiveness is maintained. The Commission found that these rules will provide law enforcement with the tools necessary to disable contraband wireless devices, which, in turn, will help combat the serious threats posed by the illegal use of such devices.

The new information collection in 47 CFR 20.23(b)(1) regarding the application to obtain new CIS certification will be used by the Bureau to determine whether to certify a system and ensure that the systems are designed to support operational readiness and minimize the risk of disabling a non-contraband device, and ensure, to the greatest extent possible, that only devices that are in fact contraband will be identified for disabling. Bureau certification will also enable targeted industry review of solutions by allowing interested stakeholders to provide feedback on the application for certification, including the proposed test plan.

The new collections in 47 CFR 20.23(b)(3) include the requirement that the CIS operator must file with the Bureau a self-certification that complies with paragraph (b)(3)(ii) of section 20.23, confirming that the testing at that specific correctional facility is complete and successful, and the CIS operator must serve notice of the testing on all relevant wireless providers prior to testing and provide such wireless providers a reasonable opportunity to participate in the tests. Self-certification will help the Bureau to ensure that qualifying requests identify contraband wireless devices accurately and in accordance with legal requirements. In addition to being used by the Bureau, the self-certification will be relied upon by the DCFO in conjunction with qualifying requests for disabling at a particular correctional facility. The serving of notice to the wireless providers will give them awareness and an opportunity to participate in the process.

The new information collections in 47 CFR 20.23(b)(4) requires that wireless providers objecting to the certification filing submit objections to the Bureau within five business days and serve the DCFO and the CIS operator, which allows all stakeholders to participate in the process and raise objections. Section 20.23(b)(5) requires that CIS operators retest and recertify their systems at least

every three years and comply with the same requirements as for initial self-certification. This requirement will enable the Bureau to ensure the ongoing accuracy and reliability of a given CIS at a particular facility. Section 20.23(b)(7) requires that a CIS operator retain records for at least five years and provide them upon request to the Bureau, which will support the Bureau's efforts to identify issues with CIS operations, resolve interference issues, and resolve complaints related to misidentification of contraband devices.

The new collections in 47 CFR 20.23(c)(1)–(2) include the requirement that individuals that seek to be recognized on the Commission's DCFO list must sent a letter to the Contraband Ombudsperson in order for the Commission to approve that person for the qualified DCFO list and provide certainty to wireless providers that disabling requests are made by duly authorized individuals. Qualifying requests that include the required information will be used by wireless carriers to prevent use of contraband devices on their network and on other wireless provider networks.

The new collections 47 CFR 20.23(c)(3)(iii)–(iv) provide that, upon receiving a disabling request from a DCFO, the wireless provider must verify the request, may reject the request and must notify the DCFO whether it is accepting or rejecting the request. This process ensures that a wireless provider responds to a DCFO within a reasonable timeframe—while giving the provider an opportunity to determine if there is an error—and to give the DCFO time to respond quickly if the request has been rejected. The wireless provider may contact the customer of record to notify them of the disabling and involve them in the process.

The new collections in 47 CFR 20.23(c)(4) provide that a wireless provider may reverse a disabled device where it determines that the device was erroneously identified as contraband, and the wireless provider must notify the DCFO of the reversal. The wireless provider may choose to involve the DCFO in the review and reversal process. The DCFO must also provide notice to the Contraband Ombudsperson of the number of erroneously disabled devices. This process ensures the integrity of the contraband device disabling process by giving the wireless provider the opportunity to reverse a disabled device—with the ability to extend review to the DCFO—and by creating safeguards to make sure that the process is efficient and reliable.

The new collections in 47 CFR 20.23(d) regarding notification from CMRS licensees to MAS operators of technical changes to their network are required so that MAS operators are given sufficient time to make necessary adjustments to maintain the effectiveness of their interdiction systems. In order to ensure that issues regarding notification to solutions providers of more frequent, localized wireless provider network changes are appropriately considered, CMRS licensees and MAS operators must negotiate in good faith to reach an agreement for notification for those types of network adjustments not covered by the notice requirement. CMRS licensees must provide notice of technical changes associated with an emergency immediately after the exigency to ensure that MAS operators continue to be notified of network changes that could impact MAS effectiveness.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–21262 Filed 9–29–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 50167]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before November 1, 2021.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or

other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Private Entity Robocall and Spoofing Information Submission Portal, FCC Form 5642.

Form Number: FCC Form 5642.

Type of Review: New collection.

Respondents: Business or other for-profit entities, and non-profit organizations.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in the TRACED Act section 10(a).

Total Annual Burden: 50 hours.

Total Annual Cost: No Cost.

Needs and Uses: Section 10(a) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) directs the Commission to establish regulations to create a process that ''streamlines the ways in which a private entity may voluntarily share with the Commission information relating to'' a call or text message that violates prohibitions regarding robocalls or spoofing set forth section 227(b) and 227(e) of the Communications Act of 1934, as amended. On June 17, 2021, the Commission adopted a *Report and Order* to implement section 10(a) by creating an online portal located on the Commission's website where private entities may submit information about robocall and spoofing violations. The Enforcement Bureau (Bureau) will manage this portal.

A private entity is any entity other than (1) an individual natural person or (2) a public entity. A public entity is any governmental organization at the federal, state, or local level. Thus, the portal is not intended for individual consumers who already have a mechanism to submit robocall or spoofing complaints via the Commission's informal complaint process.

The portal will request private entities to submit certain minimum information including, but not necessarily limited to, the name of the reporting private entity, contact information, including at least one individual name and means of contacting the entity (*e.g.,* a phone number), the caller ID information displayed, the phone number(s) called, the date(s) and time(s) of the relevant calls or texts, the name of the reporting private entity's service provider, and a description of the problematic calls or texts. Although the portal will not reject submissions that fail to include the above information, such failure will make it more difficult for the Bureau to investigate fully and take appropriate enforcement action. Once submitted, the Bureau will review to determine whether the information presents evidence of a violation of the Commission's rules. The Bureau may share submitted information with the Department of Justice, Federal Trade Commission, other federal agencies combatting robocalls, state attorney general offices, other law enforcement entities with which the Commission has information sharing agreements, and the registered traceback consortium.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–21260 Filed 9–29–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 50787]

Open Commission Meeting Thursday, September 30, 2021

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 30, 2021, which is scheduled to commence at 10:30 a.m.

Due to the current COVID–19 pandemic and related agency telework and headquarters access policies, this meeting will be in a wholly electronic format and will be open to the public on the internet via live feed from the FCC's web page at *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	PUBLIC SAFETY & HOMELAND SECURITY	*Title:* Resilient Networks (PS Docket No. 21–346); Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications (PS Docket No. 15–80); New Part 4 of the Commission's Rules Concerning Disruptions to Communications (ET Docket No. 04–35). *Summary:* The Commission will consider a Notice of Proposed Rulemaking to examine the Wireless Network Resiliency Cooperative Framework, the FCC's network outage reporting rules, and strategies to address the effect of power outages on communications networks.
2	PUBLIC SAFETY & HOMELAND SECURITY AND WIRELESS TELECOMMUNICATIONS.	*Title:* Reassessing 4.9 GHz Band for Public Safety (WP Docket No. 07–100). *Summary:* The Commission will consider an Order on Reconsideration that would vacate the 2020 Sixth Report and Order, which adopted a state-by-state leasing framework for the 4.9 GHz (4940–4900 MHz) band. The Commission also will consider an Eighth Further Notice of Proposed Rulemaking that would seek comment on a nationwide framework for the 4.9 GHz band, ways to foster greater public safety use, and ways to facilitate compatible non-public safety access to the band.
3	OFFICE OF ENGINEERING & TECHNOLOGY	*Title:* Authorizing 6 GHz Band Automated Frequency Coordination Systems (ET Docket No. 21–352). *Summary:* The Commission will consider a Public Notice beginning the process for authorizing Automated Frequency Coordination Systems to govern the operation of standard-power devices in the 6 GHz band (5.925–7.125 GHz).
4	OFFICE OF ENGINEERING & TECHNOLOGY	*Title:* Spectrum Requirements for the Internet of Things (ET Docket No. 21–353).

Item No.	Bureau	Subject
5	CONSUMER & GOVERNMENTAL AFFAIRS	*Summary:* The Commission will consider a Notice of Inquiry seeking comment on current and future spectrum needs to enable better connectivity relating to the Internet of Things (IoT).
		Title: Implementation of the Middle Class Tax Relief and Job Creation Act of 2012 (CG Docket No. 12–129); Enhancing Security of Public Safety Answering Point Communications (PS Docket No. 21–343).
		Summary: The Commission will consider a Further Notice of Proposed Rulemaking to update the Commission's rules regarding the implementation of the Public Safety Answering Point (PSAP) Do-Not-Call registry in order to protect PSAPs from unwanted robocalls.
6	WIRELINE COMPETITION AND CONSUMER & GOVERNMENTAL AFFAIRS.	*Title:* Advanced Methods to Target and Eliminate Unlawful Robocalls (CG Docket No. 17–59); Call Authentication Trust Anchor (WC Docket No. 17–97).
		Summary: The Commission will consider a Further Notice of Proposed Rulemaking that proposes to impose obligations on gateway providers to help stop illegal robocalls originating abroad from reaching U.S. consumers and businesses.
7	WIRELINE COMPETITION	*Title:* Supporting Broadband for Tribal Libraries Through E-Rate (CC Docket No. 02–6).
		Summary: The Commission will consider a Notice of Proposed Rulemaking that proposes to update sections 54.500 and 54.501(b)(1) of the Commission's rules to clarify Tribal libraries are eligible for support through the E-Rate Program.
8	INTERNATIONAL	*Title:* Strengthening Security Review of Companies with Foreign Ownership (IB Docket No. 16–155).
		Summary: The Commission will consider a Second Report and Order that would adopt Standard Questions—a baseline set of national security and law enforcement questions—that certain applicants with reportable foreign ownership must provide to the Executive Branch prior to or at the same time they file their applications with the Commission, thus expediting the Executive Branch's review for national security and law enforcement concerns.
9	WIRELINE COMPETITION	*Title:* Protecting Consumers from SIM Swap and Port-Out Fraud (WC Docket No. 21–341).
		Summary: The Commission will consider a Notice of Proposed Rulemaking to address SIM-swapping and port-out fraud.

* * * * *

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Dated: September 23, 2021.

Marlene Dortch,

Secretary.

[FR Doc. 2021–21258 Filed 9–29–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receiverships

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the institutions listed below, intends to terminate its receivership for said institutions.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS

Fund	Receivership name	City	State	Date of appointment of receiver
10119	Venture Bank	Lacey	WA	09/11/2009
10184	George Washington Savings Bank	Orland Park	IL	02/19/2010
10192	Sun American Bank	Boca Raton	FL	03/05/2010
10195	The Park Avenue Bank	New York	NY	03/12/2010
10200	Advanta Bank Corp	Draper	UT	03/19/2010
10219	Broadway Bank	Chicago	IL	04/23/2010
10229	Eurobank	San Juan	PR	04/30/2010
10232	1st Pacific Bank of California	San Diego	CA	05/07/2010
10248	Tierone Bank	Lincoln	NE	06/04/2010
10250	Nevada Security Bank	Reno	NV	06/18/2010

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS—Continued

Fund	Receivership name	City	State	Date of appointment of receiver
10254	USA Bank	Port Chester	NY	07/09/2010
10263	First National Bank of the South	Spartanburg	SC	07/16/2010
10282	Los Padres Bank	Solvang	CA	08/20/2010
10430	Covenant Bank and Trust	Rock Spring	GA	03/23/2012
10527	Guaranty Bank	Milwaukee	MI	05/05/2017

The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this time frame.

(Authority: 12 U.S.C. 1819.)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 27, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–21263 Filed 9–29–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Senior Executive Service Performance Review Board

AGENCY: Office of the Director (OD), Federal Mediation and Conciliation Service (FMCS).

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Agency's SES Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Sarah Cudahy, General Counsel 202–606–8090, *scudahy@fmcs.gov,* 250 E St. SW, Washington, DC 20427.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The Members of the Performance Review Board are:

1. Marla Hendriksson, Deputy Director for the Office of Partnership and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, Department of Health and Human Services
2. Priscilla Clark, Deputy Chief Human Capital Officer, Office of the Chief Human Capital Officer, Department of Housing and Urban Development
3. Gregory Goldstein, Chief Operating Officer, Federal Mediation and Conciliation Service
4. Angie Titcombe, Director of Human Resources, Federal Mediation and Conciliation Services

Dated: September 24, 2021.

Sarah Cudahy,

General Counsel.

[FR Doc. 2021–21205 Filed 9–29–21; 8:45 am]

BILLING CODE 6732–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0027; Docket No. 2021–0001; Sequence No. 5]

Submission for OMB Review; General Services Administration Acquisition Regulation; Contract Administration, Quality Assurance (GSA Forms 1678 and 308)

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding contract administration and quality assurance.

DATES: *Submit comments on or before:* November 1, 2021.

ADDRESSES: Written comments and recommendations for this 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Vernita Misidor, Procurement Analyst, General Services Acquisition Policy Division, at 202–357–9681 or via email to *vernita.misidor@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Under certain contracts, because of reliance on contractor inspection in lieu of Government inspection, GSA's Federal Acquisition Service requires documentation from its contractors to effectively monitor contractor performance and ensure that it will be able to take timely action should that performance be deficient.

B. Annual Reporting Burden

GSA Form 1678

Annual Responses: 250,0000.
Responses per Respondent: 1.
Total Annual Responses: 250,0000.
Hours per Response: 0.008.
Total Burden Hours: 2,000.

GSA Form 308

Annual Responses: 2,600.
Responses per Respondent: 1.
Total Annual Responses: 2,600.
Hours per Response: 0.08.
Total Burden Hours: 208.

C. Public Comments

A 60-day notice published in the **Federal Register** at 86 FR 39022 on July 23, 2021. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0027, Contract Administration, Quality Assurance (GSA Forms 1678 and 308), in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2021–21273 Filed 9–29–21; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0248; Docket No. 2021–0001; Sequence No. 6]

Submission for OMB Review; General Services Administration Acquisition Regulation; Solicitation Provisions and Contract Clauses; Placement of Orders Clause; and Ordering Information Clause

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding solicitation provisions and contract clauses, placement of orders clause, and ordering information clause.

DATES: Submit comments on or before: November 1, 2021.

ADDRESSES: Written comments and recommendations for this 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Vernita Misidor, Procurement Analyst, GSA Acquisition Policy Division, by phone at 202–357–9681 or by email at *vernita.misidor@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA has various mission responsibilities related to the acquisition and provision of the Federal Acquisition Service's (FAS's) Stock, Special Order, and Federal Supply Schedule (FSS) Programs. These mission responsibilities generate requirements that are realized through the solicitation and award of various types of FAS contracts. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

As such, the General Services Administration Acquisition Regulation (GSAR) 516.506, Solicitation provision and clauses, specifically directs contracting officers to insert 552.216–72, Placement of Orders, and 552.216–73, Ordering Information, when the contract authorizes FAS and other activities to issue delivery or task orders. These clauses include information reporting requirements for Offerors to receive electronic orders through computer-to-computer Electronic Data Interchange (EDI).

B. Annual Reporting Burden

Respondents: 18,590.

Responses per Respondent: 1.

Annual Responses: 18,590.

Hours per Response: .25.

Total Burden Hours: 4,648.

C. Public Comments

A 60-day notice was published in the **Federal Register** at 86 FR 39023 on July 23, 2021. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0248, Solicitation Provisions and Contract Clauses, Placement of Orders Clause, and Ordering Information Clause, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2021–21274 Filed 9–29–21; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

OMB Control No. 3090–0205; Docket No. 2021–0001; Sequence No. 9]

Submission for OMB Review; General Services Administration Acquisition Regulation (GSAR); Environmental Conservation, Occupational Safety, and Drug-Free Workplace

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding the extension of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Environmental Conservation, Occupational Safety, and Drug-Free Workplace.

DATES: *Submit comments on or before:* November 1, 2021.

ADDRESSES: Written comments and recommendations for this 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Torberntsson, Procurement Analyst, GSA Acquisition Policy Division, via telephone at 303–236–2677, or via email at *adina.torberntsson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Hazardous Substance Act and Hazardous Material Transportation Act prescribe standards for packaging of hazardous substances. To meet the requirements of the Acts, the General Services Administration Regulation prescribes provision 552.223–72, Hazardous Material Information, to be inserted in solicitations and contracts that provides for delivery of hazardous materials on a Free On Board (FOB) origin basis.

This information collection will be accomplished by means of the provision which requires the contractor to identify for each National Stock Number (NSN), the DOT Shipping Name, Department of Transportation (DOT) Hazards Class, and whether the item requires a DOT label. Contracting Officers and technical

personnel use the information to monitor and ensure contract requirements based on law and regulation.

Properly identified and labeled items of hazardous material allows for appropriate handling of such items throughout GSA's supply chain system. The information is used by GSA, stored in an NSN database and provided to GSA customers. Non-Collection and/or a less frequently conducted collection of the information resulting from GSAR provision 552.223–72 would prevent the Government from being properly notified. Government activities may be hindered from apprising their employees of; (1) All hazards to which they may be exposed; (2) Relative symptoms and appropriate emergency treatment; and (3) Proper conditions and precautions for safe use and exposure.

B. Annual Reporting Burden

Respondents: 563.
Responses per Respondent: 3.
Total Responses: 1689.
Hours Per Response: .67.
Total Burden Hours: 1,132.

C. Public Comments

A 60-day notice published in the **Federal Register** at 86 FR 37753 on July 16, 2021. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0205, Environmental Conservation, Occupational Safety, and Drug-Free Workplace, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2021–21270 Filed 9–29–21; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4197–N]

Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2022

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustment in the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review under the Medicare appeals process. The adjustment to the AIC threshold amounts will be effective for requests for ALJ hearings and judicial review filed on or after January 1, 2022. The calendar year 2022 AIC threshold amounts are $180 for ALJ hearings and $1,760 for judicial review.

DATES: This annual adjustment takes effect on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Liz Hosna, (410) 786–4993.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1869(b)(1)(E) of the Social Security Act (the Act) established the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review at $100 and $1,000, respectively, for Medicare Part A and Part B appeals. Additionally, section 1869(b)(1)(E) of the Act provides that beginning in January 2005, the AIC threshold amounts are to be adjusted annually by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers (U.S. city average) for July 2003 to the July preceding the year involved and rounded to the nearest multiple of $10. Sections 1852(g)(5) and 1876(b)(5)(B) of the Act apply the AIC adjustment requirement to Medicare Part C/ Medicare Advantage (MA) appeals and certain health maintenance organization and competitive health plan appeals. Health care prepayment plans are also subject to MA appeals rules, including the AIC adjustment requirement, pursuant to 42 CFR 417.840. Section 1860D–4(h)(1) of the Act, provides that a Medicare Part D plan sponsor shall meet the requirements of paragraphs (4) and (5) of section 1852(g) with respect to benefits, including appeals and the application of the AIC adjustment requirement to Medicare Part D appeals.

A. Medicare Part A and Part B Appeals

The statutory formula for the annual adjustment to the AIC threshold amounts for ALJ hearings and judicial review of Medicare Part A and Part B appeals, set forth at section 1869(b)(1)(E) of the Act, is included in the applicable implementing regulations, 42 CFR 405.1006(b) and (c). The regulations at § 405.1006(b)(2) require the Secretary of Health and Human Services (the Secretary) to publish changes to the AIC threshold amounts in the **Federal Register**. In order to be entitled to a hearing before an ALJ, a party to a proceeding must meet the AIC requirements at § 405.1006(b). Similarly, a party must meet the AIC requirements at § 405.1006(c) at the time judicial review is requested for the court to have jurisdiction over the appeal (§ 405.1136(a)).

B. Medicare Part C/MA Appeals

Section 1852(g)(5) of the Act applies the AIC adjustment requirement to Medicare Part C appeals. The implementing regulations for Medicare Part C appeals are found at 42 CFR 422, subpart M. Specifically, sections 422.600 and 422.612 discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 422.600 grants any party to the reconsideration (except the MA organization) who is dissatisfied with the reconsideration determination a right to an ALJ hearing as long as the amount remaining in controversy after reconsideration meets the threshold requirement established annually by the Secretary. Section 422.612 states, in part, that any party, including the MA organization, may request judicial review if the AIC meets the threshold requirement established annually by the Secretary.

C. Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans

Section 1876(c)(5)(B) of the Act states that the annual adjustment to the AIC dollar amounts set forth in section 1869(b)(1)(E)(iii) of the Act applies to certain beneficiary appeals within the context of health maintenance organizations and competitive medical plans. The applicable implementing regulations for Medicare Part C appeals are set forth in 42 CFR 422, subpart M and apply to these appeals in accordance with 42 CFR 417.600(b). The Medicare Part C appeals rules also apply to health care prepayment plan appeals in accordance with 42 CFR 417.840.

D. Medicare Part D (Prescription Drug Plan) Appeals

The annually adjusted AIC threshold amounts for ALJ hearings and judicial review that apply to Medicare Parts A, B, and C appeals also apply to Medicare Part D appeals. Section 1860D–4(h)(1) of the Act regarding Part D appeals requires a prescription drug plan sponsor to meet the requirements set forth in sections 1852(g)(4) and (g)(5) of the Act, in a similar manner as MA organizations. The implementing regulations for Medicare Part D appeals can be found at 42 CFR 423, subparts M

and U. More specifically, § 423.2006 of the Part D appeals rules discusses the AIC threshold amounts for ALJ hearings and judicial review. Sections 423.2002 and 423.2006 grant a Part D enrollee who is dissatisfied with the independent review entity (IRE) reconsideration determination a right to an ALJ hearing if the amount remaining in controversy after the IRE reconsideration meets the threshold amount established annually by the Secretary, and other requirements set forth in § 423.2002. Sections 423.2006 and 423.2136 allow a Part D enrollee to request judicial review of an ALJ or Medicare Appeals Council decision if the AIC meets the threshold amount established annually by the Secretary, and other requirements are met as set forth in these provisions.

II. Provisions of the Notice—Annual AIC Adjustments

A. AIC Adjustment Formula and AIC Adjustments

Section 1869(b)(1)(E) of the Act requires that the AIC threshold amounts be adjusted annually, beginning in January 2005, by the percentage increase in the medical care component of the CPI for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10.

B. Calendar Year 2022

The AIC threshold amount for ALJ hearings will remain at $180 and the AIC threshold amount for judicial review will remain at $1,760 for CY 2022. These amounts are based on the 76.149 percent increase in the medical care component of the CPI, which was at 297.600 in July 2003 and rose to 524.219 in July 2021. The AIC threshold amount for ALJ hearings changes to $176.15 based on the 76.149 percent increase over the initial threshold amount of $100 established in 2003. In accordance with section 1869(b)(1)(E)(iii) of the Act, the adjusted threshold amounts are rounded to the nearest multiple of $10. Therefore, the CY 2022 AIC threshold amount for ALJ hearings is $180.00. The AIC threshold amount for judicial review changes to $1,761.49 based on the 76.149 percent increase over the initial threshold amount of $1,000. This amount was rounded to the nearest multiple of $10, resulting in the CY 2022 AIC threshold amount of $1,760.00 for judicial review.

C. Summary Table of Adjustments in the AIC Threshold Amounts

In the following table we list the CYs 2018 through 2022 threshold amounts.

	CY 2018	CY 2019	CY 2020	CY 2021	CY 2022
ALJ Hearing	$160	$160	$170	$180	$180
Judicial Review	1,600	1,630	1,670	1,760	1,760

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2021–21288 Filed 9–29–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Mental Health Care Services for Unaccompanied Children (New Collection)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is inviting public comments on the proposed collection. The request consists of several forms that allow the Unaccompanied Children (UC) Program to provide mental health care services to UC.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: ORR received several comments on this information collection in response to the **Federal Register** Notice published on January 7, 2021, (86 FR 1114) and has provided responses to those comments in its final submission to OMB. UC Path is critical to program operations and it is important that rollout of the new system not be delayed. Therefore, the below description details what will be included in the initial launch of the UC Path case management system and revisions based on public comments will be made after initial launch. ORR plans to conduct a deliberative review of commenters' suggestions and concerns and submit a request for revisions to this information collection request in January 2022. The upcoming information collection request will also include revisions based on feedback from UC Path system users (*i.e.,* ORR grantee, contractor, and federal staff).

1. *Initial Mental Health Evaluation (Form MH–1):* This instrument is used by clinicians to document the UC's mental state upon arrival to the care provider facility. It includes an

assessment of the UC's current mental state, psychiatric history, and substance use history.

2. *Columbia Suicide Severity Rating Scale (SSRS) Risk Assessment (Form MH–2):* This instrument is used by clinicians to assess suicide risk for UC who verbalize or demonstrate suicidal thoughts or behavior. It is a shorter version of the standard Columbia SSRS used to triage mental health care for UC, a tool designed to support suicide risk assessment through a series of simple, plain-language questions that anyone can ask. The Columbia SSRS includes the most essential, evidence-supported questions required for a thorough assessment. Further information about the Columbia SSRS can be found at *https://cssrs.columbia.edu/the-columbia-scale-c-ssrs/about-the-scale/.*

3. *Mental Health Group Event (Form MH–3):* This instrument is used by clinicians to document group counseling or community meetings held at the care provider program.

4. *Clinical Contact Log (Form MH–4):* This instrument is used by clinicians to document the following mental health services: Individual counseling, group counseling, community meetings, family counseling sessions, screenings/evaluations, and collateral contact with services providers involved in the UC's case. Mental Health Group Events (Form MH–3) may be linked to a Clinical Contact Log entry.

5. *Mental Health Referral (Form MH–5):* This instrument is used by clinicians and/or medical coordinators to refer a UC for community-based mental health care services (assessments/evaluations, psychotherapy, medical referrals, and treatment); acute and long-term psychiatric hospitalizations; and referrals to out-of-network residential treatment centers.

6. *Mental Health Service Report (Form MH–6):* This instrument is used by clinicians and/or medical coordinators to document the provision of community-based mental health care services (assessments/evaluations, psychotherapy, medical referrals, and treatment); acute and long-term psychiatric hospitalizations; and referrals to out-of-network residential treatment centers. In addition, the UC interview portion of the Out-of-Network Site Visit Report (Form M–3B), which is part of a different information collection request, is accessible from within this instrument.

7. *Mental Health Task (Form MH–7):* This instrument is auto-generated to create reminders for clinicians and/or medical coordinators of tasks that must be completed. Clinicians and/or medical coordinators may edit the instrument after it is generated.

Revisions:

1. ORR plans to replace the term ''unaccompanied alien child (UC)'' with ''unaccompanied child (UC)'' throughout the instruments in this collection. The revision in terminology will be made before the UC Path system is launched.

2. ORR plans to remove the term ''alien'' from the title of this information collection and revise it to read ''Mental Health Care Services for Unaccompanied Children.''

Respondents: ORR grantee and contractor staff, and UC.

ANNUAL BURDEN ESTIMATES

Instrument	Annual total number of respondents	Annual total number of responses per respondent	Average burden *minutes* per response	Annual total burden *hours*
Initial Mental Health Evaluation (Form MH–1)	216	241	60	52,056
Columbia SSRS Risk Assessment (Form MH–2)	216	5	45	810
Mental Health Group Event (Form MH–3)	216	156	10	5,616
Clinical Contact Log (Form MH–4)	216	11,194	10	402,984
Mental Health Referral (Form MH–5)	216	24	45	3,888
Mental Health Service Report (Form MH–6)	216	31	45	5,022
Mental Health Task (Form MH–7)	216	55	5	990
Estimated Annual Burden Hours Total:				471,366

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; *Flores* v. *Reno Settlement Agreement*, No. CV85–4544–RJK (C.D. Cal. 1996).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–21280 Filed 9–29–21; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Release of Unaccompanied Children From ORR Custody (OMB #0970–0552)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is inviting public comments on revisions to an approved information collection. The request consists of several forms that allow the Unaccompanied Children (UC) Program to process release of UC from ORR custody and provide services after release.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: ORR received several comments on this information collection in response to the **Federal Register** Notice published on February 25, 2021, (86 FR 11536) and has provided responses to those comments in its final submission to OMB. UC Path is critical to program operations, and it

is important that rollout of the new system not be delayed. Therefore, the below description details what will be included in the initial launch of the UC Path case management system, and revisions based on public comments will be made after initial launch. ORR plans to conduct a deliberative review of commenters' suggestions and concerns and submit a request for revisions to this information collection request in January 2022. The upcoming information collection request will also include revisions based on feedback from UC Path system users (*i.e.,* ORR grantee, contractor, and federal staff).

A. ORR plans to revise all four instruments currently approved under OMB #0970–0552 and reinstate one instrument previously approved under OMB #0970–0498 and add it to this collection. All instruments will be incorporated into ORR's new case management system, UC Path. In addition, ORR plans to replace the term ''unaccompanied alien child (UAC)'' with ''unaccompanied child (UC)'' throughout the instruments in this collection.

1. *Verification of Release (Form R–1):* This instrument is an official document provided to UC and their sponsors by care provider facilities showing that ORR released the UC into the sponsor's care and custody. This form was previously approved under OMB #0970–0498 and is being reinstated with formatting changes under this new OMB number. No changes were made to the content. The average burden minutes per response was increased from 3 to 10 minutes.

2. *Discharge Notification (Form R–2):* This instrument is used by care provider facilities to notify stakeholders of the transfer of a UC to another care provider facility or the release of a UC from ORR custody. ORR made the following revisions:

a. The ''Proof of Relationship'' field was removed because that information is found elsewhere in UC Path and does not need to be displayed in this instrument.

b. The following fields were added: ''Returning UC, Entry #,'' ''Type of Age Out,'' ''Sponsor Category,'' ''Next Immigration Hearing,'' ''Granted Voluntary Discharge Date,'' ''Parent/Legal Guardian Separation,'' ''Is this a MPP Case,'' ''UC Parent Name,'' ''Program Type.''

c. The ''Local Law Enforcement'' and ''DHS Family Shelter'' fields were replaced with the ''Governmental Agency'' and ''Name of Government Agency'' fields.

d. The following fields were added, but are not visible on version of the instrument sent to stakeholders:

i. ''Discharge Delay,'' ''DHS Age Out Plan,'' ''Referral to Services in COO,'' ''Completed Referral Services COO?,'' ''Date Travel Document Requested,'' ''Date of Issuance of Travel Document''; and

ii. All fields in the ''Transportation Details'' section.

3. *ORR Release Notification—Notice to Immigration and Customs Enforcement (ICE) Chief Counsel—Release of Unaccompanied Child to Sponsor and Request to Change Address (Form R–3):* This instrument is used by care provider facilities to notify ICE Chief Counsel of the release of a UC and request a change of address. The instrument was reformatted. No changes were made to the content.

4. *Release Request (Form R–4):* This instrument is used by care provider facilities, ORR contractor staff, and ORR federal staff to process recommendations and decisions for release of a UC from ORR custody. ORR made the following revisions:

a. The instrument was reformatted and the titles of some fields were reworded.

b. Several fields containing biographical information for the UC were removed from the top of the instrument.

c. The ''Provide details on relationship including official documentation'' text box was removed because that information is easily accessible elsewhere in UC Path.

d. Several fields related to release dates and immigration court appearance were removed because they are easily accessible elsewhere in UC Path.

e. A new section called ''Release Request Routing'' was added to facilitate automated notification of pending releases within UC Path. Some fields in this section are auto-populated.

f. A new ''Child Advocates'' section was added, containing two fields.

g. A new ''Medical'' section was added to facilitate automated notification to the ORR medical coordinator, when applicable. The section contains two fields.

h. A new ''Legal'' section was added. All fields in this section are auto-populated with the exception of the comments field.

i. A new ''Program Information'' section was added to capture relevant details when a UC is being release to a program/entity.

j. In the ''Case Manager Recommendation'' section, a couple of auto-populated date fields were added.

5. *Safety and Well-Being Call (Form R–6):* This instrument is used by care provider facilities to document the outcome of calls made to UC and their sponsors after release to ensure the child is safe and refer the sponsor to additional resources as needed. Currently, case managers document responses from the sponsor and UC interview questions (required per ORR procedures) in their case management notes. ORR expanded this instrument to include the information currently captured in case management notes, in addition to the information captured in the current version of the Safety and Well-Being Follow-Up Call Report. The average burden minutes per response was increased from 30 to 45 minutes.

B. ORR plans to remove the term ''alien'' from the title of this information collection and revise it to read ''Release of Unaccompanied Children from ORR Custody.''

C. ORR intends to conduct a phased rollout of the UC Path system. Beginning fall 2021, ORR plans to roll the UC Path system out to a small group of care provider programs. ORR will gradually expand use of the system to other programs and expects all care provider programs will be using UC Path by spring 2022. To ensure continuity of operations, care provider programs will need the ability to continue using instruments in the UC Portal system and in other formats (*e.g.,* PDF, Excel) while they are waiting to transition over to the UC Path system. Therefore, ORR proposes continued use of the following instruments, concurrently with the UC Path versions of the same instruments, until all care provider programs are using UC Path.

1. Verification of Release (Form R–1)
2. Discharge Notification (Form R–2)
3. Notice to Immigration and Customs Enforcement's (ICE) Chief Counsel—Release of Unaccompanied Child to Sponsor and Request to Change Address (Form R–3)
4. Release Request (Form R–4)
5. Safety and Well-Being Follow-Up Call Report (Form R–6)

Respondents: ORR grantee and contractor staff and released children and sponsors.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden minutes per response	Annual total burden hours
Verification of Release (Form R–1)	216	253	10	9,108
Discharge Notification (Form R–2)	216	290	10	10,440
ORR Release Notification—ORR Notification to ICE Chief Counsel Release of UC to Sponsor and Request to Change Address (Form R–3)	216	270	5	4,860
Release Request (Form R–4)—Grantee Case Managers	216	254	25	22,860
Release Request (Form R–4)—Contractor Case Coordinators	170	321	20	18,190
Safety and Well-Being Call (R–6)	216	253	45	40,986
Estimated Annual Burden Hours Total				106,444

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; *Flores* v. *Reno Settlement Agreement,* No. CV85–4544–RJK (C.D. Cal. 1996).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–21281 Filed 9–29–21; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Services Provided to Unaccompanied Children (0970–0553)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is inviting public comments on revisions to an approved information collection. The request consists of several forms that allow the Unaccompanied Children (UC) Program to provide services to UC as required by statute and ORR policy.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: ORR received several comments on this information collection in response to the **Federal Register** Notice published on February 25, 2021, (86 FR 11537) and has provided responses to those comments in its final submission to OMB. UC Path is critical to program operations, and it is important that rollout of the new system not be delayed. Therefore, the below description details what will be included in the initial launch of the UC Path case management system and revisions based on public comments will be made after initial launch. ORR plans to conduct a deliberative review of commenters' suggestions and concerns and submit a request for revisions to this information collection request in January 2022. The upcoming information collection request will also include revisions based on feedback from UC Path system users (*i.e.,* ORR grantee, contractor, and federal staff).

A. ORR revised 11 instruments currently approved under OMB #0970–0553 and plans to add 11 new instruments to this collection. All instruments will be incorporated into ORR's new case management system, UC Path. In addition, ORR plans to remove one currently approved instrument from this collection. Finally, ORR plans to replace the term ''unaccompanied alien child (UAC)'' with ''unaccompanied children (UC)'' throughout the instruments in this collection.

1. Sponsor Assessment (Form S–5): This instrument is used by case managers to document their assessment of the suitability of a potential sponsor to provide for the safety and well-being of a UC. ORR reformatted and reorganized the instrument and reworded some of the fields. In addition, ORR made the following revisions:

- In the ''Sponsor Basic Information'' section, added the field ''Relationship to UC.''
- In the ''Family Relationships'' section, added the field ''Home Address'' and removed the field ''Are you married to your partner?''
- In the ''Household Composition'' section, removed the field ''Valid Identity Document Received.''
- In the ''Previous Sponsorship'' section, removed the field ''How many children did you sponsor?'' and added the following fields: ''What contact do you still have with the child?,'' What is the child's current legal status?,'' and ''HHM/AACG Name.''
- In the ''Proof of Identity'' section, removed the following fields: ''Sponsor's identity is verified,'' ''Household member's identity is verified,'' ''Adult Caregiver's identity is verified,'' and ''Additional information on identity.''
- In the ''Proof of Immigration Status or U.S. Citizenship'' section, added the following fields: ''Proof of Immigration Document Type,'' ''Expiration Date,'' ''Date Documents Issued,'' and ''Verified by Government Agency or Consulate.''
- In the ''Proof of Address'' section, added the field ''Alternate Phone'' and removed the following fields: ''Work Phone,'' ''Fax,'' ''Describe the area/neighborhood where you reside,'' ''Do you receive your mail at a different address?,'' ''If yes, what is the address that you use to receive mail?,'' and ''Resided at Address Within Past 5 Years.''
- In the ''Proof of Financial Stability'' section, added the following fields: ''List Proof of Financial Stability documents provided,'' ''Proof of Financial Stability Document Type,'' and ''Date Document Issued.''
- In the ''Care Plan'' section, added the fields ''Are you aware of any mental health conditions of the UC which will need treatment?'' and ''Explain how you

plan to supervise and ensure the safety of the UC'' and removed eight other fields.

○ Removed the ''Safety Plan'' section.

○ In the ''Supervision Plan'' section, removed the fields ''SSN/A No.'' and ''Explain how you plan to supervise the minor.''

○ In the ''Alternate Adult Caregiver Plan'' section, removed the field ''SSN/A No.''

○ In the ''Self-Disclosed Criminal History'' section, added the fields ''Conviction'' and ''List any child abuse and neglect history'' and removed six other fields.

○ In the ''Sponsor's Knowledge of UC Journey and Apprehension'' section, added the field ''If there is a debt still owed for the UC's journey, please explain.''

○ In the ''Human Trafficking'' section, added the fields ''If you have travelled back to your country of origin since your arrival in the U.S., please explain.'' and ''Were you ever restricted from quitting or leaving the work?'' and removed 16 other fields.

2. Home Study Assessment (formerly titled Home Study Report) (Form S–6): This instrument is used by home study providers to document their assessment of a potential sponsor after performing a home site visit. ORR reformatted and reorganized the instrument and reworded some of the fields. In addition, ORR made the following revisions:

○ In the ''UC Background'' section, removed the question related to the UC's understanding of certain U.S. laws. Questions about how sponsor disciplines children and whether UC would feel safe living with sponsor were replaced with a single question asking if the UC has any concerns about living with sponsor.

○ In the ''Sponsor's Motivation and Relationship to UC'' section, replaced the question on the location of the sponsor's family members in the U.S. and their relationship to the UC with a question asking if the sponsor has a family support system in the U.S. and whether they can provide assistance.

○ In the ''Household Members'' section, removed fields related to background checks because this information is documented by case managers elsewhere in UC Path.

○ In the ''Summary'' section, removed the risk factors and protective factors table.

3. Adult Contact Profile (formerly titled New Sponsor) (Form S–7): The purpose of this instrument has been expanded; it now acts as a hub where users can access all records related to a sponsor, adult household member, or alternate adult caregiver. The average burden minutes per response was increased from 20 to 45 minutes. In addition, ORR made the following revisions:

○ Replaced the ''UC Basic Information'' section with the ''Associated UCs'' table.

○ Removed the following fields: ''SSN,'' ''Country of Residency,'' ''Query ID,'' ''Does anyone in the Household have a Serious Contagious Disease?,'' and ''Do any of the Occupants Have Criminal Convictions or Charges, Other Than Minor Traffic Violations?''

○ Added the following fields: ''AKA,'' ''Current Age,'' ''Primary Language Spoken,'' ''Other Spoken Languages,'' ''Additional Cultural Information,'' and ''Legacy Address.''

○ Replaced the fields related to address and address flags with the ''Address History'' section.

○ Moved the information from the ''Affidavits of Support'' table to the *Sponsor Assessment.*

4. Initial Intakes Assessment (Form S–8): This instrument is used by care providers to screen UC for trafficking or other safety concerns, special needs, danger to self and others, medical conditions, and mental health concerns. ORR reformatted and reorganized the instrument and reworded some of the fields. The average burden minutes per response was increased from 15 to 20 minutes. In addition, ORR made the following revisions:

○ In the ''Information'' section, removed the field ''Date of departure from home country'' and added the following fields: ''City of Birth,'' ''Neighborhood of Birth,'' ''Religious Affiliation,'' ''Other Languages Spoken,'' ''Who did UC live with before placement?''

○ Replaced the ''Family Information'' section with the ''Family and Friends'' and ''Adult Contact Relationships'' sections.

○ Added new ''Significant Information'' section, containing six fields.

○ In the ''Medical'' section, replaced or reworded most fields and expanded the fields related to allergies into multiple fields.

○ Added a new ''Medication Overview'' section, containing three fields.

○ Revised the available fields in the ''Observable or Reported Medical Concerns'' section.

○ Reduced the number of fields in the ''Mental Health'' section to three.

5. Assessment for Risk (Form S–9): This instrument is an assessment administered by care providers to reduce the risk that a child or youth is sexually abused or abuses someone else while in ORR custody. ORR reformatted and reorganized the instrument and reworded some of the fields. In addition, ORR added several fields related to the UC's sexual history and two fields on mental and physical disability and illness. The average burden minutes per response was increased from 30 to 45 minutes.

6. UC Assessment (Form S–11): This instrument is an in-depth assessment used by care providers to document information about the UC that is used to inform provision of services (*e.g.,* case management, legal, education, medical, mental health, home studies), screen for trafficking or other safety concerns, and identify special needs. ORR reformatted and reorganized the instrument and reworded some of the fields. The average burden minutes per response was increased from 45 minutes to 2 hours. In addition, ORR made the following revisions:

○ Added a new ''Age-determination or Identity Concern'' section, containing 11 fields.

○ In the ''Additional UC Information'' section, added the following fields: ''City of Birth,'' ''Who did UC live with before placement?,'' ''Neighborhood of Birth,'' and ''Other additional information.''

○ In the ''Family and Friends'' section, removed ''Has family in Country of Origin?,'' ''Has Family in the US?'' fields; replaced ''Family in Country of Origin'' and ''Family and Friends in the U.S.'' tables with a ''Family and Friends'' table; and added ''Separated from Parents/Legal Guardian?'' and ''Migrant Protection Protocol case?'' fields.

○ Removed the ''Medical History'' and ''Medication Table'' from the ''Medical'' section and added the field ''Health care needs are being addressed?''

○ Moved fields in the ''Legal'' section to the *UC Profile* and *UC Legal Information* instruments found in other ORR information collections.

○ Removed all fields from the ''Criminal'' section and replaced them with two new fields and an area to provide details on any criminal charges (nine fields).

○ Removed the ''Mental Health/Behavior'' section because that information is available in the mental health area of UC Path.

○ In the ''Sponsor Information'' section, replaced the table with the ''Adult Contact Relationship'' table and added a section that displays ''Previous Sponsor Applications.''

○ Added a ''Documents'' section in which documents directly related to case management may be uploaded.

○ In the ''Certification'' section, created separate areas for both the clinician and case manager to certify that all required sections of the instruments are complete and accurate and added ''Translator Name'' and ''Language'' fields.

7. UC Case Review (Form S–12): This instrument is used by care providers to document new information obtained after completion of the UC Assessment. ORR reformatted and reorganized the instrument and reworded some of the fields. The average burden minutes per response was increased from 30 minutes to 2 hours. In addition, ORR made the following revisions:

○ Added a new ''Age-determination or Identity Concern'' section, containing 11 fields.

○ Created a new ''Additional UC Information'' section and added the following fields: ''UC Case Review Type,'' ''Who did UC live with before placement?,'' ''City of Birth,'' ''Religious Affiliation,'' ''Neighborhood of Birth,'' ''Separated from Parents/Legal Guardian?,'' and ''Parent Separation Case Updates.''

○ In the ''Medical'' section, added a new ''Health care needs are being addressed?'' field and a table of ''Existing Mental Health Diagnoses'' that is auto-populated from information entered into the mental health area of UC Path.

○ Removed the ''Medical History'' and ''Medication Table'' from the ''Medical'' section.

○ In the ''Mental Health'' section, removed the fields under ''Psychological Evaluation'' and added the following fields: ''Date Completed,'' ''Date of Evaluation,'' and ''Evaluator.''

○ Added a new ''Case Plan'' section, containing seven fields.

○ Moved fields in the ''Legal'' section to the *UC Profile* and *UC Legal Information* instruments found in other ORR information collections.

○ In the ''Sponsor Information'' section, replaced the table with the ''Adult Contact Relationships'' table and added a section that displays ''Previous Sponsor Applications.''

○ Added a new ''Criminal'' section (two fields) and an area to provide details on any criminal charges (nine fields).

○ Added a ''Documents'' section in which documents directly related to case management may be uploaded.

○ Removed the ''Recommendations'' and ''Care Plan'' sections.

○ In the ''Certification'' section, created separate areas for both the clinician and case manager to certify that all required sections of the instruments are complete and accurate and added ''Translator Name'' and ''Language'' fields.

8. Individual Service Plan (Form S–13): This instrument is used by care providers to document all services provided to the UC. ORR revised the formatting and reworded some of the fields. In addition, ORR added the following fields: ''Contract Number,'' ''Individual Service Plan,'' ''Entity Name,'' ''Notes,'' ''List Team Members who Contributed to ISP,'' ''Translator Name,'' and ''Language.'' In addition, ORR added an area where documents directly related to the service plan may be uploaded. The average burden minutes per response was increased from 15 to 20 minutes.

9. Long Term Foster Care Travel Request (Form S–14): This instrument is used by long term foster care providers to request ORR approval for a UC to travel with their foster family outside of the local community. ORR revised the formatting and reworded some of the fields. In addition, ORR added the following fields: ''Status,'' ''Transportation Notes,'' ''Policy #,'' ''Remand for Further Information,'' and ''ORR Decision.'' The average burden minutes per response was increased from 15 to 20 minutes.

10. Child Advocate Recommendation and Appointment (Form S–15): This instrument is used by care providers and other stakeholders to recommend appointment of a child advocate for a UC. The child advocate contractor then enters whether a child advocate is available and ORR approves the appointment. ORR reformatted and reorganized the instrument and reworded some of the fields. No changes were made to the content.

11. 30 Day Restrictive Placement Case Review (formerly titled Summary Notes: Thirty Day Restrictive Placement Case Review) (Form S–16): This instrument is used by care providers to document their 30-day review for UC placed in a restrictive setting. ORR revised the formatting and added the following fields: ''Out-of-Network RTC Provider,'' ''Case Manager Name,'' ''Case Coordinator Name,'' ''FFS Name,'' ''Name and Title,'' and ''Date.''

12. Admission (Form S–18): This instrument is used by ORR grantee case managers and clinicians to document the UC's initial needs, functioning, and history. Other instruments are also accessible from within the Admission instrument, such as transfer requests, travel requests, and various child assessments. This is a new instrument that ORR plans to add to this collection.

13. Home Study/Post-Release Service (HS/PRS) Referral (Form S–19): This instrument is used by ORR grantee case managers to refer a UC for a home study and/or post-release services. This is a new instrument that ORR plans to add to this collection.

14. UC Authorized/Restricted Call List and Call Log (Form S–20): This instrument is used by case managers to create a list of authorized and restricted contacts to ensure safe communication for the UC and document the details of phone calls made by a UC. This is a new instrument that ORR plans to add to this collection.

15. Home Study/Post-Release Service (HS/PRS) Primary Provider Entity (Form S–21A): This instrument is used by grantee HS/PRS providers to add identifying information about their organization into the UC Path system. Each organization only needs to be created once. Field values may be updated as often as needed. This is a new instrument that ORR plans to add to this collection.

16. Home Study/Post-Release Service (HS/PRS) Subcontractor Entity (Form S–21B): Entity record. Each organization only needs to be created once. Field values may be updated as often as needed. This is a new instrument that ORR plans to add to this collection.

17. Home Study/Post-Release Service (HS/PRS) Primary Provider Profile (Form S–21C): This instrument is used by HS/PRS providers to add identifying information about caseworkers employed by their organization. Each organization only needs to be created once. Field values may be updated as often as needed. This is a new instrument that ORR plans to add to this collection.

18. Home Study/Post-Release Service (HS/PRS) Subcontractor Profile (Form S–21D): This instrument is used by HS/PRS providers to add identifying information about caseworkers employed their sub-grantee organizations. Each organization only needs to be created once. Field values may be updated as often as needed. This is a new instrument that ORR plans to add to this collection.

19. Post-Release Service (PRS) Event (Form S–22): This instrument is used by post-release service caseworkers to document referrals made and services provided at critical junctures of service provision, such as 14-day, 6-month, 12-month, and closure. The instrument contains auto-populated sponsor information and areas to document information about the HS/PRS provider, reason for referral, the minor's placement and safety status, and services areas addressed. This is a new

instrument that ORR plans to add to this collection.

20. Case Manager Call Log and Case Notes (Form S–23): This instrument is used by case managers to log any contact (in-person, phone, video, social media, or mail) they make in relation to the UC's case, including any related notes. This is a new instrument that ORR plans to add to this collection.

21. Sponsor Application (Form S–24): This instrument is used by care providers to document certain information and milestones in the sponsor application process. This is a new instrument that ORR plans to add to this collection. After publication of the 60-day **Federal Register** Notice, ORR reorganized the ''Background Checks'' data entry section of this instrument and removed the following fields: ''Date ARI Form Uploaded,'' ''Days from Offered to Accepted,'' and ''Days from Accepted to Occurred.''

22. Ohio Youth Assessment System (OYAS) Reentry Tool: No changes were made to this instrument.

23. UC Case Status: ORR is discontinuing this instrument.

B. ORR plans to remove the term ''alien'' from the title of this information collection and revise it to read ''Services Provided to Unaccompanied Children.''

C. ORR intends to conduct a phased rollout of the UC Path system. Beginning fall 2021, ORR plans to roll the UC Path system out to a small group of care provider programs. ORR will gradually expand use of the system to other programs and expects all care provider programs will be using UC Path by spring 2022. To ensure continuity of operations, care provider programs will need the ability to continue using instruments in the UC Portal system and in other formats (*e.g.,* PDF, Excel) while they are waiting to transition over to the UC Path system. Therefore, ORR proposes continued use of the following instruments, concurrently with the UC Path versions of the same instruments, until all care provider programs are using UC Path.

1. Sponsor Assessment (Form S–5)
2. Home Study Report (Form S–6)
3. New Sponsor (Form S–7)
4. Initial Intakes Assessment (Form S–8)
5. Assessment for Risk (Form S–9)
6. UC Assessment (Form S–11)
7. UC Case Review (Form S–12)
8. Individual Service Plan (Form S–13)
9. Long Term Foster Care Travel Request (Form S–14)

Respondents: ORR grantee and contractor staff, UC, sponsors, and child advocates.

ANNUAL BURDEN ESTIMATES

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden minutes per response	Annual total burden hours
Sponsor Assessment (Form S–5)	216	265	60	57,240
Home Study Assessment (Form S–6)	60	81	45	3,645
Adult Contact Profile (Form S–7)	216	1324	45	214,488
Initial Intakes Assessment (Form S–8)	216	278	20	20,016
Assessment for Risk (Form S–9)	216	556	45	90,072
UC Assessment (Form S–11)	216	278	120	120,096
UC Case Review (Form S–12)	216	556	120	240,192
Individual Service Plan (Form S–13)	216	694	20	49,968
Long Term Foster Care Travel Request (Form S–14)	30	8	20	80
Child Advocate Recommendation and Appointment (Form S–15)	216	5	15	270
Thirty Day Restrictive Placement Case Review (Form S–16)	15	67	45	754
Admission (Form S–18)	216	278	20	20,016
Home Study/Post-Release Service (HS/PRS) Referral (Form S–19)	216	68	20	4,896
UC Authorized/Restricted Call List and Call Log (Form S–20)	216	6981	5	125,658
Home Study/Post-Release Service (HS/PRS) Primary Provider Entity (Form S–21A)	9	1	5	1
Home Study/Post-Release Service (HS/PRS) Subcontractor Entity (Form S–21B)	51	1	5	4
Home Study/Post-Release Service (HS/PRS) Primary Provider Profile (Form S–21C)	9	13	5	10
Home Study/Post-Release Service (HS/PRS) Subcontractor Profile (Form S–21D)	51	13	5	55
Post-Release Service (PRS) Event (Form S–22)	60	968	60	58,080
Case Manager Call Log and Case Notes (Form S–23)	216	8426	5	151,668
Sponsor Application (Form S–24)	216	265	60	57,240
Ohio Youth Assessment System (OYAS) Reentry Tool	15	101	75	1,894
Estimated Annual Burden Hours Total:	.....	.....	.....	1,216,343

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; *Flores* v. *Reno Settlement Agreement*, No. CV85–4544–RJK (C.D. Cal. 1996).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–21282 Filed 9–29–21; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5392]

Interpreting Sameness of Gene Therapy Products Under the Orphan Drug Regulations; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Interpreting Sameness of Gene Therapy Products Under the Orphan Drug Regulations.'' The guidance document provides FDA's current thinking on certain criteria that help determine sameness of human gene therapy products for the purpose of orphan-drug designation and orphan-drug exclusivity. The guidance is intended to assist stakeholders, including industry and academic sponsors who seek orphan-drug designation and orphan-drug exclusivity, in the development of gene therapies for rare diseases. The guidance announced in this notice finalizes the draft guidance of the same title dated January 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on September 30, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–5392 for ''Interpreting Sameness of Gene Therapy Products Under the Orphan Drug Regulations.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Sana Hussain, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Interpreting Sameness of Gene Therapy Products Under the Orphan Drug Regulations.'' The guidance provides FDA's current thinking on certain criteria that help determine sameness of human gene therapy products for the purpose of orphan-drug designation and orphan-drug exclusivity. The guidance is intended to assist stakeholders, including industry and academic sponsors who seek orphan-drug designation and orphan-drug exclusivity, in the development of gene therapies for rare diseases. The guidance focuses specifically on factors FDA intends to consider when determining sameness for gene therapy products and does not address sameness determinations for other types of products.

In the **Federal Register** of January 30, 2020 (85 FR 5445), FDA announced the availability of the draft guidance of the

same title dated January 2020. Additionally, in the **Federal Register** of April 23, 2020 (85 FR 22740), FDA announced that it is extending the comment period on the notice published January 30, 2020. FDA received several comments on the draft guidance; the comments generally supported the approach described in the guidance and requested additional clarification. Those comments were considered as the guidance was finalized, and changes to the guidance include adding clarification and examples, as feasible. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated January 2020.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Interpreting Sameness of Gene Therapy Products Under the Orphan Drug Regulations.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 316 have been approved under OMB control number 0910–0167 and the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 24, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21324 Filed 9–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0776]

Studying Multiple Versions of a Cellular or Gene Therapy Product in an Early Phase Clinical Trial; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft document entitled ''Studying Multiple Versions of a Cellular or Gene Therapy Product in an Early-Phase Clinical Trial; Draft Guidance for Industry.'' The draft guidance document provides recommendations to sponsors interested in studying multiple versions of a cellular or gene therapy product in an early phase clinical trial for a single disease. Sponsors have expressed interest in gathering preliminary evidence of safety and activity using multiple versions of a cellular or gene therapy product in a single clinical trial, where each version is a distinct product that should be submitted to FDA in a separate investigational new drug application (IND). The draft guidance describes the regulatory framework for conducting such studies, including recommendations on how to organize and structure the INDs, submit new information, and report adverse events.

DATES: Submit either electronic or written comments on the draft guidance by December 29, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0776 for ''Studying Multiple Versions of a Cellular or Gene Therapy Product in an Early-Phase Clinical Trial; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed

except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Studying Multiple Versions of a Cellular or Gene Therapy Product in an Early-Phase Clinical Trial; Draft Guidance for Industry.'' The draft guidance document provides recommendations to sponsors interested in studying multiple versions of a cellular or gene therapy product in an early phase clinical trial for a single disease. Sponsors have expressed interest in gathering preliminary evidence of safety and activity using multiple versions of a cellular or gene therapy product in a single clinical trial, where each version is a distinct product that should be submitted to FDA in a separate IND. The objective of these early phase clinical studies is to guide which version(s) of the product to pursue for further development in later phase studies. Thus, these studies are not intended to provide primary evidence of effectiveness to support a marketing application and generally are not adequately powered to demonstrate a statistically significant difference in efficacy between the study arms. The draft guidance describes the regulatory framework for conducting such studies, including recommendations on how to organize and structure the INDs, submit new information, and report adverse events.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Studying Multiple Versions of a Cellular or Gene Therapy Product in an Early-Phase Clinical Trial.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 and Form FDA 1572 have been approved under OMB control number 0910–0014.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 24, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21322 Filed 9–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0368]

Investigator Responsibilities—Safety Reporting for Investigational Drugs and Devices; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Investigator Responsibilities—Safety Reporting for Investigational Drugs and Devices.'' The draft guidance provides recommendations to help clinical investigators comply with the safety reporting requirements of investigational new drug application (IND) studies and investigational device exemption (IDE) studies. The guidance is intended to help clinical investigators of drugs identify safety information that is considered an unanticipated problem involving risk to human subjects or others and that therefore requires prompt reporting to institutional review boards (IRBs) and to help clinical investigators of devices identify safety information that meets the requirements for reporting unanticipated adverse device effects (UADEs) to sponsors and to IRBs.

DATES: Submit either electronic or written comments on the draft guidance by November 29, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact

information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0368 for ''Investigator Responsibilities—Safety Reporting for Investigational Drugs and Devices.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Paul Gouge, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6328, Silver Spring, MD 20993–0002, 301–796–3093, *paul.gouge@fda.hhs.gov; Stephen Ripley,* Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or Maureen Dreher, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G216, Silver Spring, MD 20993–0002, 301–796–2505.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Investigator Responsibilities—Safety Reporting for Investigational Drugs and Devices.'' In the **Federal Register** of September 29, 2010 (75 FR 59935), FDA published a final rule amending the IND safety reporting requirements under 21 CFR part 312 and adding safety reporting requirements for persons conducting bioavailability (BA) and bioequivalence (BE) studies under 21 CFR part 320. Subsequently, the 2012 final guidance for industry and investigators entitled ''Safety Reporting Requirements for INDs and BA/BE Studies'' (December 2012) (the 2012 final guidance [1]) was published to help sponsors and investigators comply with safety reporting requirements for INDs and for IND-exempt BA/BE studies. Recently, the recommendations for investigators provided in the 2012 final guidance were updated, merged, and published for notice and comment purposes in the draft guidance for industry entitled ''Sponsor Responsibilities—Safety Reporting Requirements and Safety Assessment for IND and Bioavailability/Bioequivalence Studies'' (June 2021) (the merged 2021 draft guidance).

The merged 2021 draft guidance does not, however, include the recommendations for investigator responsibilities that are included in the 2012 final guidance. Instead, the recommendations on the safety reporting responsibilities of the investigator are the primary focus of this draft guidance. Additionally, this draft guidance incorporates concepts pertaining to investigator responsibilities for adverse event reporting that are described in the guidance for clinical investigators, sponsors, and IRBs entitled ''Adverse Event Reporting to IRBs—Improving Human Subject Protection'' (January 2009) (the 2009 procedural final guidance [2]).

When finalized, this guidance will supersede corresponding sections in the 2012 final guidance and the 2009 procedural final guidance. Until that time, however, the 2012 final guidance and the 2009 procedural final guidance continue to represent FDA's current thinking on investigator responsibilities for safety reporting for investigational medical products.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA

[1] Available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/safety-reporting-requirements-inds-investigational-new-drug-applications-and-babe.*

[2] Available at: *https://www.fda.gov/media/72267/download.*

on ''Investigator Responsibilities—Safety Reporting for Investigational Drugs and Devices.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 320 have been approved under OMB control number 0910–0672; and the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs*, *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances*, *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov.*

Dated: September 27, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21316 Filed 9–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0432]

Microbiological Quality Considerations in Non-Sterile Drug Manufacturing; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Microbiological Quality Considerations in Non-Sterile Drug Manufacturing.'' The purpose of this guidance is to assist manufacturers in assuring the microbiological quality of their non-sterile drugs (NSDs). This guidance discusses product development considerations, risk assessments, and certain current good manufacturing practice (CGMP) requirements that are particularly relevant to microbiological control in a manufacturing operation for an NSD.

DATES: Submit either electronic or written comments on the draft guidance by December 29, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0432 for ''Microbiological Quality Considerations in Non-Sterile Drug Manufacturing.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the

electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sue Zuk, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6684, Silver Spring, MD 20903–0002, 240–402–9133.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Microbiological Quality Considerations in Non-Sterile Drug Manufacturing.'' The guidance provides recommendations to help manufacturers assess the risk of contamination of their NSDs with objectionable microorganisms or high bioburden levels in order to establish appropriate specifications and manufacturing controls that prevent such contamination and assure the safety, quality, identity, purity, and efficacy of the NSD. The guidance also imparts specific considerations to control microbial proliferation for selected non-sterile dosage forms that may present unique manufacturing challenges and patient safety risks.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Microbiological Quality Considerations in Non-Sterile Drug Manufacturing.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 211 have been approved under OMB control number 0910–0139. In the **Federal Register** of July 28, 2015 (80 FR 44973), FDA published a burden analysis for preparing and maintaining CGMP records for active pharmaceutical ingredients under section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(a)(2)(B)).

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov*.

Dated: September 23, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21222 Filed 9–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–2316]

Benefit-Risk Assessment for New Drug and Biological Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Benefit-Risk Assessment for New Drug and Biological Products.'' FDA has developed this guidance document in accordance with commitments associated with the Prescription Drug User Fee Act of 2017 (PDUFA VI) under the FDA Reauthorization Act of 2017 and requirements under the 21st Century Cures Act (Cures Act). The intent of this guidance is to provide drug sponsors and other stakeholders with a clearer understanding of how considerations about a drug's benefits, risks, and risk management options factor into certain FDA pre- and postmarket regulatory decisions about new drug applications (NDAs) submitted under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and biologics license applications (BLAs).

DATES: Submit either electronic or written comments on the draft guidance by November 29, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–2316 for ''Benefit-Risk Assessment for New Drug and Biological Products; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993–0002, 301–796–5003, *Graham.Thompson@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Benefit-Risk Assessment for New Drug and Biological Products.'' This guidance articulates important considerations that factor into the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research's benefit-risk assessments for drug products, including how patient experience data may be used to inform benefit-risk assessment. It discusses how sponsors can inform FDA's benefit-risk assessment through the design and conduct of the development program, as well as how they may present benefit and risk information in the marketing application. It also discusses opportunities for interaction between FDA and sponsors to discuss benefit-risk considerations in connection with the development of a BLA or NDA. The guidance concludes with additional considerations on benefit-risk assessments that inform regulatory decision making that occurs in the postmarket setting.

Industry stakeholders have indicated having a clearer understanding of FDA's decision making context, and benefit-risk considerations can help inform sponsors' decisions about their drug development programs and the evidence they generate in support of their NDA or BLA. Patients and other stakeholders may gain further insight into the key issues that inform FDA's assessment of benefit and risk, and a clearer understanding of how these issues fit into the regulatory framework of drug development and evaluation.

In May 2019, FDA participated in a public meeting conducted by Duke University's Robert J. Margolis, MD, Center for Health Policy (Duke-Margolis) on ''Characterizing FDA's Approach to Benefit-Risk Assessment Throughout the Medical Product Life Cycle'' (84 FR 17176, April 24, 2019). Materials from this meeting are available here: *https://healthpolicy.duke.edu/events/public-meeting-characterizing-fdas-approach-benefit-risk-assessment-throughout-medical.* This meeting was intended to gather industry, patient, researcher, and other stakeholder input on applying FDA's benefit-risk framework throughout the human drug lifecycle and best approaches to communicating FDA's benefit-risk assessment. This meeting was intended to meet an FDA commitment included in the sixth authorization of the PDUFA VI. Input from this meeting supported development of this draft guidance for industry.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Benefit-Risk Assessment for New Drug and Biological Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Additional Information

Section 3002 of Title III, Subtitle A of the Cures Act (Pub. L. 114–255), directs FDA to develop patient-focused drug development guidance to address a number of areas, including under section 3002(c)(8) of the Cures Act how the Secretary, if appropriate, anticipates using relevant patient experience data and related information, including with respect to the structured risk-benefit assessment framework described in section 505(d) of the FD&C Act (21 U.S.C. 355(d)), to inform regulatory decision making.

In addition, FDA committed to meet certain performance goals under the sixth authorization of PDUFA. These goal commitments were developed in consultation with patient and consumer advocates, healthcare professionals, and other public stakeholders, as part of negotiations with regulated industry. Section I.J.2. of the commitment letter, ''Enhancing Benefit-Risk Assessment in Regulatory Decision-Making'' (available at *https://www.fda.gov/media/99140/download*), outlines work, including the

development of a draft guidance on benefit-risk assessments for new drugs and biologics, to further the Agency's implementation of structured benefit-risk assessment, including the incorporation of the patient's voice in drug development and decision making, in the human drug review program.

III. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001 as follows: (1) The content and format of investigational new drugs applications, (2) expanded access uses and treatment of patients with immediately life-threatening conditions or serious diseases or conditions, (3) regulatory requirements pertaining to postmarketing study commitments, and (4) risk evaluation and mitigation strategies pertaining to benefit-risk assessments. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014 as follows: (1) The content and format of NDAs, (2) the submission of the patient population, (3) the submission of clinical trial data, and (4) benefit-risk planning, including early consultations with FDA meetings in end-of-phase 2 and pre-NDA meetings. The collections of information for good laboratory practices for nonclinical laboratory studies have been approved under OMB control number 0910–0119. The collections of information for the submission of postmarketing adverse drug experience reporting have been approved under OMB control number 0910–0230. The collections of information in 21 CFR 201.56 and 201.57 for the content and format requirements for labeling of drugs and biologics have been approved under OMB control number 0910–0572. The collections of information in the guidance for industry entitled ''Expedited Programs for Serious Conditions—Drugs and Biologics'' have been approved under OMB control number 0910–0765. The collections of information in the guidance for industry entitled ''Providing Postmarket Periodic Safety Reports in the International Conference on Harmonisation E2C(R2) Format (Periodic Benefit-Risk Evaluation Report)'' have been approved under OMB control number 0910–0771.

IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: September 24, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21194 Filed 9–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0981]

Fee Rate for Using a Tropical Disease Priority Review Voucher in Fiscal Year 2022

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the fee rates for using a tropical disease priority review voucher for fiscal year (FY) 2022. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Amendments Act of 2007 (FDAAA), authorizes FDA to determine and collect priority review user fees for certain applications for review of drug and biological products when those applications use a tropical disease priority review voucher. These vouchers are awarded to the sponsors of certain tropical disease product applications submitted after September 27, 2007, the enactment date of FDAAA, upon FDA approval of such applications. The amount of the fee submitted to FDA with applications using a tropical disease priority review voucher is determined each fiscal year based on the difference between the average cost incurred by FDA to review a human drug application designated as priority review in the previous fiscal year and the average cost incurred in the review of an application that is not subject to priority review in the previous fiscal year. This notice establishes the tropical disease priority review fee rate for FY 2022 and outlines the payment procedures for such fees.

FOR FURTHER INFORMATION CONTACT: Andrew Bank, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 62019A, Beltsville, MD, 20705–4304, 301–796–0292.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1102 of FDAAA (Pub. L. 110–85) added section 524 to the FD&C Act (21 U.S.C. 360n). In section 524, Congress encouraged development of new drug and biological products for prevention and treatment of tropical diseases by offering additional incentives for obtaining FDA approval of such products. Under section 524, the sponsor of an eligible human drug application submitted after September 27, 2007, for a tropical disease (as defined in section 524(a)(3) of the FD&C Act) shall receive a priority review voucher upon approval of the tropical disease product application (as defined in section 524(a)(4) of the FD&C Act), assuming other criteria are met. The recipient of a tropical disease priority review voucher may either use the voucher for a future human drug application submitted to FDA under section 505(b)(1) of the FD&C Act (21 U.S.C. 355(b)(1)) or section 351(a) of the Public Health Service Act (PHS Act) (42 U.S.C. 262), or transfer (including by sale) the voucher to another party. The voucher may be transferred repeatedly until it ultimately is used for a human drug application submitted to FDA under section 505(b)(1) of the FD&C Act or section 351(a) of the PHS Act. A priority review is a review conducted with a Prescription Drug User Fee Act (PDUFA) goal date of 6 months after the receipt or filing date, depending upon the type of application. Information regarding the PDUFA goals is available at: *https://www.fda.gov/media/99140/download.*

The sponsor that uses a priority review voucher is entitled to a priority review but must pay FDA a priority review user fee in addition to any other fee required by PDUFA. FDA published guidance on its website about how this tropical disease priority review voucher program operates (available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/tropical-disease-priority-review-vouchers*).

This notice establishes the tropical disease priority review fee rate for FY 2022 as $1,266,651 and outlines FDA's process for implementing the collection of the priority review user fees. This rate is effective on October 1, 2021, and will remain in effect through September 30,

2022, for applications submitted with a tropical disease priority review voucher.

II. Tropical Disease Priority Review User Fee Rate for FY 2022

FDA interprets section 524(c)(2) of the FD&C Act as requiring that FDA determine the amount of the tropical disease priority review user fee each fiscal year based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year and the average cost incurred by FDA in the review of a human drug application that is not subject to priority review in the previous fiscal year.

A priority review is a review conducted with a PDUFA goal date of 6 months after the receipt or filing date, depending on the type of application. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of the applications granted priority review status within this expedited timeframe. Normally, an application for a human drug or biological product will qualify for priority review if the product is intended to treat a serious condition and, if approved, would provide a significant improvement in safety or effectiveness. An application that does not receive a priority designation receives a standard review. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of standard applications within 10 months of the receipt or filing date, depending on the type of application. A priority review involves a more intensive level of effort and a higher level of resources than a standard review.

FDA is setting a fee for FY 2022, which is to be based on standard cost data from the previous fiscal year, FY 2021. However, the FY 2021 submission cohort has not been closed out yet, thus the cost data for FY 2021 are not complete. The latest year for which FDA has complete cost data is FY 2020. Furthermore, because FDA has never tracked the cost of reviewing applications that get priority review as a separate cost subset, FDA estimated this cost based on other data that the Agency has tracked. The Agency expects all applications that received priority review would contain clinical data. The application categories with clinical data for which FDA tracks the cost of review are: (1) New drug applications (NDAs) for a new molecular entity (NME) with clinical data and (2) biologics license applications (BLAs).

The total cost for FDA to review NME NDAs with clinical data and BLAs in FY 2020 was $227,248,467. There was a total of 86 applications in these two categories (53 NME NDAs with clinical data and 33 BLAs). (Note: these numbers exclude the President's Emergency Plan for AIDS Relief NDAs; no investigational new drug review costs are included in this amount.) Of these applications 55 (35 NDAs and 20 BLAs) received priority review and the remaining 31 (18 NDAs and 13 BLAs) received standard reviews. Because a priority review compresses a review that ordinarily takes 10 months into 6 months, FDA estimates that a multiplier of 1.67 (10 months divided by 6 months) should be applied to non-priority review costs in estimating the effort and cost of a priority review as compared to a standard review. This multiplier is consistent with published research on this subject, which supports a priority review multiplier in the range of 1.48 to 2.35 (Ref. 1). Using FY 2020 figures, the costs of a priority and standard review are estimated using the following formula:

$$(55\ \alpha \times 1.67) + (31\ \alpha) = \$227{,}248{,}467$$

where ''α'' is the cost of a standard review and ''α times 1.67'' is the cost of a priority review. Using this formula, the cost of a standard review for NME NDAs and BLAs is calculated to be $1,849,804 (rounded to the nearest dollar) and the cost of a priority review for NME NDAs and BLAs is 1.67 times that amount, or $3,089,173 (rounded to the nearest dollar). The difference between these two cost estimates, or $1,239,369, represents the incremental cost of conducting a priority review rather than a standard review.

For the FY 2022 fee, FDA will need to adjust the FY 2020 incremental cost by the average amount by which FDA's average costs increased in the 3 years prior to FY 2021, to adjust the FY 2020 amount for cost increases in FY 2021. That adjustment, published in the **Federal Register** on August 16, 2021 (see 86 FR 45732), setting FY 2022 PDUFA fees, is 2.2013 percent for the most recent year, not compounded. Increasing the FY 2020 incremental priority review cost of $1,239,369 by 2.2013 percent (or 0.022013) results in an estimated cost of $1,266,651 (rounded to the nearest dollar). This is the tropical disease priority review user fee amount for FY 2022 that must be submitted with a priority review voucher for a human drug application in FY 2022, in addition to any PDUFA fee that is required for such an application.

III. Fee Rate Schedule for FY 2022

The fee rate for FY 2022 is set out in table 1:

TABLE 1—TROPICAL DISEASE PRIORITY REVIEW SCHEDULE FOR FY 2022

Fee category	Priority review fee rate for FY 2022
Application submitted with a tropical disease priority review voucher in addition to the normal PDUFA fee	$1,266,651

IV. Implementation of Tropical Disease Priority Review User Fee

Under section 524(c)(4)(A) of the FD&C Act, the priority review user fee is due upon submission of a human drug application for which the priority review voucher is used. Section 524(c)(4)(B) of the FD&C Act specifies that the application will be considered incomplete if the priority review user fee and all other applicable user fees are not paid in accordance with FDA payment procedures. In addition, FDA may not grant a waiver, exemption, reduction, or refund of any fees due and payable under section 524 of the FD&C Act (see section 524(c)(4)(C)), and FDA may not collect priority review voucher fees ''except to the extent provided in advance in appropriation Acts.'' (Section 524(c)(5)(B) of the FD&C Act.)

The tropical disease priority review fee established in the new fee schedule must be paid for any application that is received on or after October 1, 2021, and is submitted with a priority review voucher. This fee must be paid in addition to any other fee due under PDUFA. Payment should be made in U.S. currency by electronic check, check, bank draft, wire transfer, credit card, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing

House (ACH) also known as eCheck). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (Note: only full payments are accepted. No partial payments can be made online). Once you search for your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments should be made using U.S. bank accounts as well as U.S. credit cards.

FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov,* a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after the user fee identification (ID) number is generated.

If paying by paper check, the user fee ID number should be included on the check, followed by the words ''Tropical Disease Priority Review.'' All paper checks should be in U.S. currency from a U.S. bank made payable and mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only.) If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013. (This telephone number is only for questions about courier delivery.) The FDA post office box number (P.O. Box 979107) must be written on the check. If needed, FDA's tax identification number is 53–0196965.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. The account information is as follows: U.S. Dept. of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Number: 75060099, Routing Number: 021030004, SWIFT: FRNYUS33.

V. Reference

The following reference is on display with the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD, 20852, 240–402–7500, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is not available electronically at *https://www.regulations.gov* as this reference is copyright protected. FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Ridley, D.B., H.G. Grabowski, and J.L. Moe, ''Developing Drugs for Developing Countries,'' *Health Affairs,* vol. 25, no. 2, pp. 313–324, 2006, available at: *https://www.healthaffairs.org/doi/full/10.1377/hlthaff.25.2.313.*

Dated: September 24, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21328 Filed 9–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0983]

Fee Rate for Using a Material Threat Medical Countermeasure Priority Review Voucher in Fiscal Year 2022

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the fee rate for using a material threat medical countermeasure (MCM) priority review voucher for fiscal year (FY) 2022. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the 21st Century Cures Act (Cures Act), authorizes FDA to determine and collect material threat MCM priority review user fees for certain applications for review of human drug products when those applications use a material threat MCM priority review voucher. These vouchers are awarded to the sponsors of material threat MCM applications that meet all the requirements of this program and upon FDA approval of such applications. The amount of the fee for using a material threat MCM priority review voucher is determined each FY based on the difference between the average cost incurred by FDA to review a human drug application designated as priority review in the previous FY, and the average cost incurred in the review of an application that is not subject to priority review in the previous FY. This notice establishes the material threat MCM priority review fee rate for FY 2022 and outlines the payment procedures for such fees.

FOR FURTHER INFORMATION CONTACT: Lola Olajide, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61077B, Beltsville, MD 20705–4304, 240–402–4244.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3086 of the Cures Act (Pub. L. 114–255) added section 565A to the FD&C Act (21 U.S.C. 360bbb–4a). In section 565A of the FD&C Act, Congress encouraged development of material threat MCMs by offering additional incentives for obtaining FDA approval of such products. Under section 565A of the FD&C Act, the sponsor of an eligible material threat MCM application (as defined in section 565A(a)(4)) shall receive a priority review voucher upon approval of the material threat MCM application. The recipient of a material threat MCM priority review voucher may either use the voucher for a future human drug application submitted to FDA under section 505(b)(1) of the FD&C Act (21 U.S.C. 355(b)(1)) or section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), or transfer (including by sale) the voucher to another party. The voucher may be transferred repeatedly until it ultimately is used for a human drug application submitted to FDA under section 505(b)(1) of the FD&C Act or section 351(a) of the Public Health Service Act. A priority review is a review conducted with a Prescription Drug User Fee Act (PDUFA) goal date of 6 months after the receipt or filing date, depending on the type of application. Information regarding PDUFA goals is available at: *https://www.fda.gov/media/99140/download.*

The sponsor that uses a material threat MCM priority review voucher is entitled to a priority review of its eligible human drug application, but must pay FDA a material threat MCM priority review user fee in addition to any user fee required by PDUFA for the application. Information regarding the material threat MCM priority review voucher program is available at: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/21st-century-cures-act-mcm-related-cures-provisions.*

This notice establishes the material threat MCM priority review fee rate for FY 2022 at $1,266,651 and outlines FDA's payment procedures for material threat MCM priority review user fees.

This rate is effective on October 1, 2021, and will remain in effect through September 30, 2022.

II. Material Threat Medical Countermeasure Priority Review User Fee Rate for FY 2022

FDA interprets section 565A(c)(2) of the FD&C Act as requiring that FDA determine the amount of the material threat MCM priority review user fee each fiscal year based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year, and the average cost incurred by FDA in the review of a human drug application that is not subject to priority review in the previous fiscal year.

A priority review is a review conducted with a PDUFA goal date of 6 months after the receipt or filing date, depending on the type of application. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of the applications granted priority review status within this expedited timeframe. Normally, an application for a human drug product will qualify for priority review if the product is intended to treat a serious condition and, if approved, would provide a significant improvement in safety or effectiveness. An application that does not receive a priority designation receives a standard review. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of standard applications within 10 months of the receipt or filing date, depending on the type of application. A priority review involves a more intensive level of effort and a higher level of resources than a standard review.

FDA is setting a fee for FY 2022, which is to be based on standard cost data from the previous fiscal year, FY 2021. However, the FY 2021 submission cohort has not been closed out yet, thus the cost data for FY 2021 are not complete. The latest year for which FDA has complete cost data is FY 2020. Furthermore, because FDA has never tracked the cost of reviewing applications that get priority review as a separate cost subset, FDA estimated this cost based on other data that the Agency has tracked. The Agency expects all applications that received priority review would contain clinical data. The application categories with clinical data for which FDA tracks the cost of review are: (1) New drug applications (NDAs) for a new molecular entity (NME) with clinical data and (2) biologics license applications (BLAs).

The total cost for FDA to review NME NDAs with clinical data and BLAs in FY 2020 was $227,248,467. There was a total of 86 applications in these two categories (53 NME NDAs with clinical data and 33 BLAs). (*Note:* These numbers exclude the President's Emergency Plan for AIDS Relief NDAs; no investigational new drug review costs are included in this amount.) Of these applications 55 (35 NDAs and 20 BLAs) received priority review and the remaining 31 (18 NDAs and 13 BLAs) received standard reviews. Because a priority review compresses a review schedule that ordinarily takes 10 months into 6 months, FDA estimates that a multiplier of 1.67 (10 months ÷ 6 months) should be applied to non-priority review costs in estimating the effort and cost of a priority review as compared to a standard review. This multiplier is consistent with published research on this subject, which supports a priority review multiplier in the range of 1.48 to 2.35 (Ref. 1). Using FY 2020 figures, the costs of a priority and standard review are estimated using the following formula:

$$(55\ \alpha \times 1.67) + (31\ \alpha) = \$227{,}248{,}467$$

where ''α'' is the cost of a standard review and ''α times 1.67'' is the cost of a priority review. Using this formula, the cost of a standard review for NME NDAs and BLAs is calculated to be $1,849,804 (rounded to the nearest dollar) and the cost of a priority review for NME NDAs and BLAs is 1.67 times that amount, or $3,089,173 (rounded to the nearest dollar). The difference between these two cost estimates, or $1,239,369, represents the incremental cost of conducting a priority review rather than a standard review.

For the FY 2022 fee, FDA will need to adjust the FY 2020 incremental cost by the average amount by which FDA's average costs increased in the 3 years prior to FY 2021, to adjust the FY 2020 amount for cost increases in FY 2021. That adjustment, published in the **Federal Register** on August 16, 2021 (86 FR 45732), setting FY 2022 PDUFA fees, is 2.2013 percent for the most recent year, not compounded. Increasing the FY 2020 incremental priority review cost of $1,239,369 by 2.2013 percent (or 0.022013) results in an estimated cost of $1,266,651 (rounded to the nearest dollar). This is the material threat MCM priority review user fee amount for FY 2022 that must be submitted with a priority review voucher for a human drug application in FY 2022, in addition to any PDUFA fee that is required for such application.

III. Fee Rate Schedule for FY 2022

The fee rate for FY 2022 is set out in table 1:

TABLE 1—MATERIAL THREAT MEDICAL COUNTERMEASURE PRIORITY REVIEW SCHEDULE FOR FY 2022

Fee category	Priority review fee rate for FY 2022
Application submitted with a material threat MCM priority review voucher in addition to the normal PDUFA fee	$1,266,651

IV. Implementation of Material Threat Medical Countermeasure Priority Review User Fee

Under section 565A(c)(4)(A) of the FD&C Act, the priority review user fee is due upon submission of a human drug application for which the priority review voucher is used. Section 565A(c)(4)(B) of the FD&C Act specifies that the application will be considered incomplete if the priority review user fee and all other applicable user fees are not paid in accordance with FDA payment procedures. In addition, section 565A(c)(4)(C) specifies that FDA may not grant a waiver, exemption, reduction, or refund of any fees due and payable under this section of the FD&C Act.

The material threat MCM priority review fee established in the new fee schedule must be paid for any application with a priority review voucher that is received on or after October 1, 2021. This fee must be paid in addition to any other fee due under PDUFA. Payment must be made in U.S. currency by electronic check, check, bank draft, wire transfer, credit card, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck). Secure electronic payments can be submitted using the

User Fees Payment Portal at *https://userfees.fda.gov/pay.* (*Note:* Only full payments are accepted. No partial payments can be made online.) Once you search for your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov,* a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after the user fee ID number is generated.

If paying by paper check, the user fee identification (ID) number should be included on the check, followed by the words ''Material Threat Medical Countermeasure Priority Review'' or ''MCMPRV.'' All paper checks must be in U.S. currency from a U.S. bank made payable and mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery). The FDA post office box number (P.O. Box 979107) must be written on the check. If needed, FDA's tax identification number is 53–0196965.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. The account information is as follows: U.S. Dept. of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Number: 75060099, Routing Number: 021030004, SWIFT: FRNYUS33.

V. Reference

The following reference is on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is not available electronically at *https://www.regulations.gov* as this reference is copyright protected. FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Ridley, D.B., H.G. Grabowski, and J.L. Moe, ''Developing Drugs for Developing Countries,'' *Health Affairs,* vol. 25, no. 2, pp. 313–324, 2006, available at: *https://www.healthaffairs.org/doi/full/10.1377/hlthaff.25.2.313.*

Dated: September 24, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21317 Filed 9–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0982]

Fee Rate for Using a Rare Pediatric Disease Priority Review Voucher in Fiscal Year 2022

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the fee rate for using a rare pediatric disease priority review voucher for fiscal year (FY) 2022. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to determine and collect rare pediatric disease priority review user fees for certain applications for review of human drug or biological products when those applications use a rare pediatric disease priority review voucher. These vouchers are awarded to sponsors of rare pediatric disease product applications that meet all the requirements of this program and are submitted 90 days or more after July 9, 2012, upon FDA approval of such applications. The amount of the fee for using a rare pediatric disease priority review voucher is determined each FY, based on the difference between the average cost incurred by FDA to review a human drug application designated as priority review in the previous FY, and the average cost incurred in the review of an application that is not subject to priority review in the previous FY. This notice establishes the rare pediatric disease priority review fee rate for FY 2022 and outlines the payment procedures for such fees.

FOR FURTHER INFORMATION CONTACT: Tim Davidson, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61077A, Beltsville, MD 20705–4304, 301–796–3254.

SUPPLEMENTARY INFORMATION:

I. Background

Section 908 of FDASIA (Pub. L. 112–144) added section 529 to the FD&C Act (21 U.S.C. 360ff). In section 529 of the FD&C Act, Congress encouraged development of new human drugs and biological products for prevention and treatment of certain rare pediatric diseases by offering additional incentives for obtaining FDA approval of such products. Under section 529 of the FD&C Act, the sponsor of an eligible human drug application submitted 90 days or more after July 9, 2012, for a rare pediatric disease (as defined in section 529(a)(3)) shall receive a priority review voucher upon approval of the rare pediatric disease product application. The recipient of a rare pediatric disease priority review voucher may either use the voucher for a future human drug application submitted to FDA under section 505(b)(1) of the FD&C Act (21 U.S.C. 355(b)(1)) or section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), or transfer (including by sale) the voucher to another party. The voucher may be transferred repeatedly until it ultimately is used for a human drug application submitted to FDA under section 505(b)(1) of the FD&C Act or section 351(a) of the Public Health Service Act. A priority review is a review conducted with a Prescription Drug User Fee Act (PDUFA) goal date of 6 months after the receipt or filing date, depending on the type of application. Information regarding current PDUFA goals is available at: *https://www.fda.gov/media/99140/download.*

The sponsor that uses a rare pediatric disease priority review voucher is entitled to a priority review of its eligible human drug application, but must pay FDA a rare pediatric disease priority review user fee in addition to any user fee required by PDUFA for the application. Information regarding the rare pediatric disease priority review voucher program is available at: *https://www.fda.gov/Drugs/DevelopmentApprovalProcess/DevelopmentResources/ucm375479.htm.*

This notice establishes the rare pediatric disease priority review fee rate for FY 2022 at $1,266,651 and outlines FDA's payment procedures for rare

pediatric disease priority review user fees. This rate is effective on October 1, 2021, and will remain in effect through September 30, 2022.

II. Rare Pediatric Priority Review User Fee Rate for FY 2022

Under section 529(c)(2) of the FD&C Act, the amount of the rare pediatric disease priority review user fee is determined each fiscal year based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year, and the average cost incurred by FDA in the review of a human drug application that is not subject to priority review in the previous fiscal year.

A priority review is a review conducted with a PDUFA goal date of 6 months after the receipt or filing date, depending on the type of application. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of the applications granted priority review status within this expedited timeframe. Normally, an application for a human drug or biological product will qualify for priority review if the product is intended to treat a serious condition and, if approved, would provide a significant improvement in safety or effectiveness. An application that does not receive a priority designation receives a standard review. As described in the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of standard applications within 10 months of the receipt or filing date, depending on the type of application. A priority review involves a more intensive level of effort and a higher level of resources than a standard review.

FDA is setting a fee for FY 2022, which is to be based on standard cost data from the previous fiscal year, FY 2021. However, the FY 2021 submission cohort has not been closed out yet, thus the cost data for FY 2021 are not complete. The latest year for which FDA has complete cost data is FY 2020. Furthermore, because FDA has never tracked the cost of reviewing applications that get priority review as a separate cost subset, FDA estimated this cost based on other data that the Agency has tracked. The Agency expects all applications that received priority review would contain clinical data. The application categories with clinical data for which FDA tracks the cost of review are: (1) New drug applications (NDAs) for a new molecular entity (NME) with clinical data and (2) biologics license applications (BLAs).

The total cost for FDA to review NME NDAs with clinical data and BLAs in FY 2020 was $227,248,467. There was a total of 86 applications in these two categories (53 NME NDAs with clinical data and 33 BLAs). (*Note:* These numbers exclude the President's Emergency Plan for AIDS Relief NDAs; no investigational new drug review costs are included in this amount.) Of these applications 55 (35 NDAs and 20 BLAs) received priority review and the remaining 31 (18 NDAs and 13 BLAs) received standard reviews. Because a priority review compresses a review schedule that ordinarily takes 10 months into 6 months, FDA estimates that a multiplier of 1.67 (10 months ÷ 6 months) should be applied to non-priority review costs in estimating the effort and cost of a priority review as compared to a standard review. This multiplier is consistent with published research on this subject, which supports a priority review multiplier in the range of 1.48 to 2.35 (Ref. 1). Using FY 2020 figures, the costs of a priority and standard review are estimated using the following formula:

$$(55\ \alpha \times 1.67) + (31\ \alpha) = \$227{,}248{,}467$$

where ''α'' is the cost of a standard review and ''α times 1.67'' is the cost of a priority review. Using this formula, the cost of a standard review for NME NDAs and BLAs is calculated to be $1,849,804 (rounded to the nearest dollar) and the cost of a priority review for NME NDAs and BLAs is 1.67 times that amount, or $3,089,173 (rounded to the nearest dollar). The difference between these two cost estimates, or $1,239,369, represents the incremental cost of conducting a priority review rather than a standard review.

For the FY 2022 fee, FDA will need to adjust the FY 2020 incremental cost by the average amount by which FDA's average costs increased in the 3 years prior to FY 2021, to adjust the FY 2020 amount for cost increases in FY 2021. That adjustment, published in the **Federal Register** on August 16, 2021 (86 FR 45732), setting the FY 2022 PDUFA fees, is 2.2013 percent for the most recent year, not compounded. Increasing the FY 2020 incremental priority review cost of $1,239,369 by 2.2013 percent (or 0.022013) results in an estimated cost of $1,266,651 (rounded to the nearest dollar). This is the rare pediatric disease priority review user fee amount for FY 2022 that must be submitted with a priority review voucher for a human drug application in FY 2022, in addition to any PDUFA fee that is required for such an application.

III. Fee Rate Schedule for FY 2022

The fee rate for FY 2022 is set in table 1:

TABLE 1—RARE PEDIATRIC DISEASE PRIORITY REVIEW SCHEDULE FOR FY 2022

Fee category	Priority review fee rate for FY 2022
Application submitted with a rare pediatric disease priority review voucher in addition to the normal PDUFA fee	$1,266,651

IV. Implementation of Rare Pediatric Disease Priority Review User Fee

Under section 529(c)(4)(A) of the FD&C Act, the priority review user fee is due (*i.e.,* the obligation to pay the fee is incurred) when a sponsor notifies FDA of its intent to use the voucher. Section 529(c)(4)(B) of the FD&C Act specifies that the application will be considered incomplete if the priority review user fee and all other applicable user fees are not paid in accordance with FDA payment procedures. In addition, section 529(c)(4)(C) specifies that FDA may not grant a waiver, exemption, reduction, or refund of any fees due and payable under this section of the FD&C Act.

The rare pediatric disease priority review fee established in the new fee schedule must be paid for applications submitted with a priority review voucher received on or after October 1, 2021. To comply with this requirement, the sponsor must notify FDA 90 days prior to submission of the human drug application that is the subject of a priority review voucher of an intent to submit the human drug application, including the estimated submission date.

Upon receipt of this notification, FDA will issue an invoice to the sponsor for the rare pediatric disease priority review voucher fee. The invoice will include instructions on how to pay the fee via

wire transfer, check, or online payments.

As noted in section II, if a sponsor uses a rare pediatric disease priority review voucher for a human drug application, the sponsor would incur the rare pediatric disease priority review voucher fee in addition to any PDUFA fee that is required for the application. The sponsor would need to follow FDA's normal procedures for timely payment of the PDUFA fee for the human drug application.

Payment must be made in U.S. currency by electronic check, check, bank draft, wire transfer, credit card, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* (*Note:* Only full payments are accepted. No partial payments can be made online). Once you search for your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S bank accounts as well as U.S. credit cards.

If paying by paper check the invoice number should be included on the check, followed by the words ''Rare Pediatric Disease Priority Review.'' All paper checks must be in U.S. currency from a U.S. bank made payable and mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery). The FDA post office box number (P.O. Box 979107) must be written on the check. If needed, FDA's tax identification number is 53–0196965.

If paying by wire transfer, please reference your invoice number when completing your transfer. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. The account information is as follows: U.S. Dept. of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Number: 75060099, Routing Number: 021030004, SWIFT: FRNYUS33.

V. Reference

The following reference is on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is not available electronically at *https://www.regulations.gov* as this reference is copyright protected. FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Ridley, D.B., H.G. Grabowski, and J.L. Moe, ''Developing Drugs for Developing Countries,'' *Health Affairs,* vol. 25, no. 2, pp. 313–324, 2006, available at: *https://www.healthaffairs.org/doi/full/10.1377/hlthaff.25.2.313*.

Dated: September 27, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21329 Filed 9–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that RETHYMIC (allogeneic processed thymus tissue-agdc), manufactured by Enzyvant Therapeutics, GmbH, meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Myrna Hanna, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that RETHYMIC (allogeneic processed thymus tissue-agdc), manufactured by Enzyvant Therapeutics, GmbH, meets the criteria for a priority review voucher. RETHYMIC (allogeneic processed thymus tissue-agdc) is indicated for immune reconstitution in pediatric patients with congenital athymia.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/industry/developing-products-rare-diseases-conditions/rare-pediatric-disease-rpd-designation-and-voucher-programs*. For further information about RETHYMIC (allogeneic processed thymus tissue-agdc), go to the Center for Biologics Evaluation and Research Cellular and Gene Therapy Products website at *https://www.fda.gov/vaccines-blood-biologics/cellular-gene-therapy-products/approved-cellular-and-gene-therapy-products*.

Dated: September 21, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21311 Filed 9–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–2307]

Real-World Data: Assessing Electronic Health Records and Medical Claims Data To Support Regulatory Decision-Making for Drug and Biological Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Real-World Data: Assessing Electronic Health Records and Medical Claims Data to Support Regulatory Decision-Making for Drug and Biological Products.'' FDA is issuing this draft guidance as part of a series of guidance documents under its Real-World Evidence (RWE) Program and to satisfy, in part, a mandate under the Federal Food, Drug, and Cosmetic Act (FD&C Act) to issue guidance about the use of RWE in regulatory decision making. This draft guidance is intended to provide sponsors, researchers, and other interested stakeholders with considerations when proposing to use electronic health records (EHRs) or medical claims data in clinical studies to support a regulatory decision for effectiveness or safety.

DATES: Submit either electronic or written comments on the draft guidance by November 29, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–2307 for ''Real-World Data: Assessing Electronic Health Records and Medical Claims Data to Support Regulatory Decision-Making for Drug and Biological Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dianne Paraoan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3326, Silver Spring, MD 20993–0002, 301–796–2500, *dianne.paraoan@fda.hhs.gov,* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Real-World Data: Assessing Electronic Health Records and Medical Claims Data to Support Regulatory Decision-Making for Drug and Biological Products.'' This guidance discusses the following topics related to the potential use of EHRs and medical claims in clinical studies to support regulatory decisions: Selection of data sources that appropriately address the study question and sufficiently capture study populations, exposure, outcomes of interest, and key covariates; development and validation of definitions for study design elements (*e.g.,* exposure, outcomes, covariates); and data provenance and quality during data accrual, data curation, and data transformation into the final study-specific dataset.

Section 3022 of the 21st Century Cures Act (Cures Act) amended the FD&C Act to add section 505F, Utilizing Real World Evidence (21 U.S.C. 355g). This section requires the establishment of a program to evaluate the potential

use of RWE to: (1) Help to support the approval of a new indication for a drug approved under section 505(c) of the FD&C Act (21 U.S.C. 355(c)); and (2) help to support or satisfy postapproval study requirements. This section also requires that FDA use the program to inform guidance for industry on the circumstances under which sponsors of drugs may rely on RWE and the appropriate standards and methodologies for the collection and analysis of RWE submitted to evaluate the potential use of RWE for those purposes. Further, under the Prescription Drug User Fee Amendments of 2017 (PDUFA VI), FDA committed to the goal of publishing draft guidance on how RWE can contribute to the assessment of safety and effectiveness in regulatory submissions.

FDA is issuing the draft guidance as part of a series of guidance documents to satisfy the Cures Act mandate and the PDUFA VI goal. The RWE Program will cover clinical studies that use real-world data sources, such as information from routine clinical practice, to derive RWE.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Real-World Data: Assessing Electronic Health Records and Medical Claims Data to Support Regulatory Decision-Making for Drug and Biological Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 11 have been approved under OMB control number 0910–0303; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 27, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21315 Filed 9–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Charter Renewal for the Advisory Committee on Infant and Maternal Mortality (Formerly the Advisory Committee on Infant Mortality)

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, HHS is hereby giving notice that the Advisory Committee on Infant Mortality has been renamed the Advisory Committee on Infant and Maternal Mortality (ACIMM) and has been renewed.

DATES: The effective date of the charter renewal is September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Vanessa Lee, MPH, Designated Federal Official, HRSA, Maternal and Child Health Bureau, 5600 Fishers Lane, 18N84, Rockville, Maryland 20857; (301) 443–0543; or *VLee1@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACIMM is authorized by section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended. The Committee is governed by provisions of Public Law 92–463, as amended, (5 U.S.C. App. 2), which sets forth standards for the formation and use of Advisory Committees. ACIMM advises the Secretary of HHS on department activities, partnerships, policies, and programs directed at reducing infant mortality, maternal mortality and severe maternal morbidity, and improving the health status of infants and women before, during, and after pregnancy. The Committee provides advice on how best to coordinate federal, state, local, tribal, and territorial governmental efforts designed to improve infant mortality, related adverse birth outcomes, and maternal health, as well as influence similar efforts in the private and voluntary sectors. ACIMM provides guidance and recommendations on the policies, programs, and resources required to address the disparities and inequities in infant mortality, related adverse birth outcomes and maternal health outcomes, including maternal mortality and severe maternal morbidity. With its focus on underlying causes of the disparities and inequities seen in birth outcomes for women and infants, the Committee advises the Secretary on the health, social, economic, and environmental factors contributing to the inequities and proposes structural, policy, and/or systems level changes.

The charter renewal and name change for ACIMM was approved on September 30, 2021, which will also stand as the filing date. Renewal of the ACIMM charter gives authorization for the ACIMM committee to operate until September 30, 2023.

A copy of the ACIMM charter is available on the ACIMM website at *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.* A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website address for the FACA database is *http://www.facadatabase.gov/.*

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–21277 Filed 9–29–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: The HRSA Community-Based Outreach Reporting Module, OMB #0906–0064, Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: HRSA at the U.S. Department of Health and Human Services (HHS) requests a revision to the data collection for the Community-Based Workforce for COVID–19 Vaccine Outreach Programs (CBO Programs) (OMB # 0906–0064). In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this Notice has closed.

DATES: Comments on this ICR should be received no later than November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–9094.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The HRSA Community-Based Outreach Reporting Module, OMB # 0906–0064, Revision.

Abstract: HRSA requests approval of a revision to the current emergency ICR to continue data collection for the Community-Based Workforce for COVID–19 Vaccine Outreach Programs (CBO Programs), which support nonprofit private or public organizations to establish, expand, and sustain a public health workforce to prevent, prepare for, and respond to COVID–19. This data is needed to comply with requirements to monitor funds distributed under the American Rescue Plan Act of 2021 and in accordance with OMB Memorandum M–21–20.

A 60-day Notice was published in the **Federal Register** (vol. 86, FR pp. 45739 (August 16, 2021)). There were no public comments.

Need and Proposed Use of the Information: HRSA is requesting approval from OMB for a revision to the current emergency data collection module to support the HRSA Health Systems Bureau (HSB) and Office of Planning, Analysis, and Evaluation (OPAE) requirements to monitor and report on funds distributed. As part of the American Rescue Plan Act of 2021, signed into law on March 11, 2021 (Pub. L. 117–2), HRSA will award $250 million to develop and support a community-based workforce that will engage in locally tailored efforts to build vaccine confidence and bolster COVID–19 vaccinations in underserved communities. In July and August 2021, under the CBO Programs HRSA expects to award funding to over 100 organizations, including those comprising community health workers, patient navigators, and social support specialists. These organizations are responsible for educating and assisting individuals in accessing and receiving COVID–19 vaccinations. This includes activities such as conducting direct face-to-face outreach and other forms of direct outreach to community members to educate them about the vaccine, assisting individuals in making a vaccine appointment, providing resources to find convenient vaccine locations, and assisting individuals with transportation or other needs to get to a vaccination site. The program will address persistent health disparities by offering support and resources to vulnerable and medically underserved communities, including racial and ethnic minority groups and individuals living in areas of high social vulnerability.

HRSA is proposing a new data reporting module—the Community-Based Vaccine Outreach Program Reporting Module—to collect information on CBO Program-funded activities. The CBO Program will collect monthly progress report data from funded organizations. This data will be related to the public health workforce developed, the vaccine outreach performed by this workforce, including the distribution of vaccine booster shots (a new addition to the data collection plan since the 60-day notice was released), and the vaccination rate by this workforce in a manner that assesses equitable access to vaccine services and whether the most vulnerable populations and communities are reached. This data will allow HRSA to clearly identify how the funds are being used and monitored throughout the period of performance and to ensure that high-need populations are being reached and vaccinated. Responses to some data requirements are only reported during the initial reporting cycle (*e.g.,* the name, location, affiliation, etc. of the individual supporting community outreach), though respondents may update the data should any of that change during the duration of the reporting period.

Likely Respondents: Respondents are community outreach workers employed by entities supported by HRSA grant funding over a period of either 6 months (HRSA–21–136) or 12 months (HRSA–21–140).

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of unique organizations funded through the two programs	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Community outreach worker profile form.	10 cooperative agreement awards for HRSA–21–136 and 121 grant awards for HRSA–21–136.	Total number of Community outreach workers deployed through the work of the two programs.	One response per respondent.	Reported once across the duration of the programs (the period of performance for HRSA–21–136 is 6 months, and for HRSA–21–140 is 12 months).	Sampled response times of approximately 15 minutes per response.	Total hours spent on responses for all funded organizations over a 2-year period.
	131 (est.)	3,000 (est.)	1	3,000	0.27	800.
Form name	Number of community outreach workers	Number of respondents over the period of the programs	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Vaccine-site data—outreach to community members form.	Number of community outreach workers deployed for 6 months (HRSA–21–136) or 12 months (HRSA–21–140) of support.	Number of community members in contact with community outreach workers.	One response per respondent or less (e.g., one response from the audience of a group outreach event).	Reported once across the duration of the programs (the period of performance for HRSA–21–136 is 6 months, and for HRSA–21–140 is 12 months).	Sampled response times of approximately 6 minutes per response.	Total hours spent on responses for all funded organizations over a 2-year period.
	3,000 (est.)	4,000,000 (est.)	1	4,000,000	0.12	466,667.
General outreach activities for community members form.	Number of community outreach workers deployed for 6 months (HRSA–21–136) or 12 months (HRSA–21–140) of support.	Number of community members in contact with community outreach workers.	One response per respondent or less (e.g., one response from the audience of a group outreach event).	Reported once across the duration of the programs (the period of performance for HRSA–21–136 is 6 months, and for HRSA–21–140 is 12 months).	Sampled response times of approximately 6 minutes per response.	Total hours spent on responses for all funded organizations over a 2-year period.
	3,000 (est.)	4,000,000 (est.)	1	4,000,000	0.12	466,667.
Vaccine-site data—outreach to community members form—booster shots only.	Number of community outreach workers deployed for 6 months (HRSA–21–136) or 12 months (HRSA–21–140) of support.	Number of community members in contact with community outreach workers.	One response per respondent or less (e.g., one response from the audience of a group outreach event).	Reported once across the duration of the programs (the period of performance for HRSA–21–136 is 6 months, and for HRSA–21–140 is 12 months).	Sampled response times of approximately 6 minutes per response.	Total hours spent on responses for all funded organizations over a 2-year period.
	3,000 (est.)	4,000,000 (est.)	1	4,000,000	0.12	466,667.
Grand Total	12,003,000 (est.)			12,003,000 (est.)		1,400,801.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–21207 Filed 9–29–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of a virtual meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA or the Council) will be holding the 72nd full Council meeting utilizing virtual technology on Monday, November, 15 and Wednesday, November, 17, 2021 from 1:00–5:00 p.m. (ET) on both days. The meeting will be open to the public; a public comment session will be held during the meeting. Pre-registration is required to provide public comment during the meeting. To pre-register to attend or to provide public comment, please send an email to *PACHA@hhs.gov* and include your name, organization, and title by close of business Monday, November 8, 2021. If you decide you would like to provide public comment but do not pre-register, you may submit your written statement

by emailing *PACHA@hhs.gov* by close of business Wednesday, November 24, 2021. The meeting agenda will be posted on the PACHA page on *HIV.gov* at *https://www.hiv.gov/federal-response/pacha/about-pacha* prior to the meeting.

DATES: The meeting will be held on Monday, November, 15 and Wednesday, November, 17, 2021 from 1:00–5:00 p.m. (ET) on both days. This meeting will be conducted utilizing virtual technology.

ADDRESSES: Instructions on attending this meeting virtually will be posted one week prior to the meeting at: *https://www.hiv.gov/federal-response/pacha/about-pacha.*

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, MPA, Public Health Analyst, Presidential Advisory Council on HIV/AIDS, 330 C Street SW, Room L609A, Washington, DC 20024; (202) 795–7622 or *PACHA@hhs.gov.* Additional information can be obtained by accessing the Council's page on the *HIV.gov* site at *www.hiv.gov/pacha.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996 and is currently operating under the authority given in Executive Order 13889, dated September 27, 2019. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention and care of HIV infection and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House.

Dated: September 23, 2021.

Caroline Talev,

Management Analyst, Office of Infectious Disease and HIV/AIDS Policy, Alternate Designated Federal Officer, Presidential Advisory Council on HIV/AIDS, Office of the Assistant Secretary for Health, Department of Health and Human Services.

[FR Doc. 2021–21275 Filed 9–29–21; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information on Research Opportunities and Operational Activities Related to the NIH Strategic Plan To Advance Research on the Health and Well-Being of Sexual & Gender Minorities Fiscal Years 2021–2025

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: Through this Request for Information (RFI), the Sexual & Gender Minority Research Office (SGMRO) in the Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI), Office of the Director (OD), National Institutes of Health (NIH), invites feedback from stakeholders throughout the scientific research community, clinical practice communities, patient and family advocates, scientific or professional organizations, federal partners, internal NIH stakeholders, and other interested constituents on research opportunities and operational activities related to the NIH Strategic Plan to Advance Research on the Health and Well-Being of Sexual and Gender Minorities fiscal years (FY) 2021–2025. The goal of this request for information is to provide SGM focused organizations, researchers, non-profits, and community members an opportunity to identify potential research opportunities and operational activities related to the NIH mission.

DATES: The SGMRO's Request for Information is open for public comment for a period of 8 weeks. Comments must be received on or before COB (5:00 p.m. ET) December 3, 2021, to ensure consideration. After the public comment period has closed, the comments received by SGMRO will be considered in a timely manner for further implementation of the NIH Strategic Plan to Advance Research on the Health and Well-Being of Sexual and Gender Minorities FY 2021–2025. Comments will be summarized and posted to the SGMRO website.

ADDRESSES: Please see the NIH Strategic Plan to Advance Research on the Health and Well-Being of Sexual and Gender Minorities FY 2021–2025. Comments must be received by email at *SGMRO@nih.gov.* Please include Request for Information in the subject line.

FOR FURTHER INFORMATION CONTACT: Irene Avila, Ph.D., Assistant Director, Sexual & Gender Minority Research Office (SGMRO), *irene.avila@nih.gov,* (301) 594–9701.

SUPPLEMENTARY INFORMATION:

Background: ''Sexual and gender minority'' is an overarching term that includes, but is not limited to, individuals who identify as lesbian, gay, bisexual, asexual, transgender, two-spirit, queer, and/or intersex. Individuals with same-sex or -gender attractions or behaviors and those with a difference in sex development are also included. These populations also encompass those who do not self-identify with one of these terms but whose sexual orientation, gender identity or expression, or reproductive development is characterized by non-binary constructs of sexual orientation, gender, and/or sex.

The Sexual and Gender Minority Research Office (SGMRO) coordinates sexual and gender minority (SGM)–related research and activities by working directly with the NIH Institutes, Centers, and Offices. The Office was officially established in September 2015 within the NIH Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI) in the Office of the Director.

This **Federal Register** notice is in accordance with the 21st Century Cures Act, NIH is required to regularly update their strategic plans. In September 2020, SGMRO posted the NIH Strategic Plan to Advance Research on the Health and Well-Being of Sexual and Gender Minorities FY 2021–2025. The current strategic plan has provided NIH with a framework to improve the health of SGM populations through increased research and support of scientists conducting SGM-relevant research.

Request for Comments on Research Opportunities and Operational Activities related to the NIH Strategic Plan to Advance Research on the Health and Well-being of Sexual and Gender Minorities FY 2021–2025: The NIH has developed a strategic plan to advance SGM research over the next five years. The SGMRO invites input from stakeholders throughout the scientific research community, clinical practice communities, patient and family advocates, scientific or professional organizations, federal partners, internal NIH stakeholders, and other interested members of the public on potential research opportunities and operational activities related to this plan and the NIH mission. This input is valuable, and the community's time and consideration are appreciated.

The SGMRO is invested in increasing SGM-related health research and identifying high-priority research

opportunities and operational activities related to SGM health.

The FY 2021–2025 strategic plan includes the following four scientific themes and research opportunities:

1. Clinical research
2. Social and behavioral research
3. Research in chronic diseases and comorbidities
4. Methods and measurement research

Overarching considerations for SGM research extend to all scientific research goal areas to help foster a deeper understanding of SGM health disparities. Key examples of these overarching considerations for SGM research include intersectionality, life situations, aging, SGM subpopulations, and relevant research frameworks.

The FY 2021–2025 strategic plan includes the following four operational goals:

1. Advance rigorous research on the health of SGM populations in both the extramural and intramural research communities;
2. Expand SGM health research by fostering partnerships and collaborations with a strategic array of internal and external stakeholders;
3. Foster a highly skilled and diverse workforce in SGM health research; and
4. Encourage data collection related to SGM populations in research and the biomedical research workforce.

The populations considered under the SGM umbrella term are inclusive and capture all individuals and populations who do not self-identify with binary constructs of sexual orientation, gender, and/or sex. Examples of such populations may include intersex individuals or individuals with differences or disorders of sex development (DSD), Two-Spirit people, transgender and gender-expansive people, bisexual people, and individuals whose gender identity falls within the full spectrum of gender.

To advance NIH priorities in SGM health research, SGMRO requests input from SGM health researchers and related communities on potential research opportunities related to the goals of the FY 2021–2025 strategic plan.

Responses to this RFI are voluntary. Do not include any proprietary, classified, confidential, trade secret, or sensitive information in your response. The responses will be reviewed by NIH staff, and individual feedback will not be provided to any responder. The Government will use the information submitted in response to this RFI at its discretion. The Government reserves the right to use any submitted information on public NIH websites; in reports; in summaries of the state of the science; in any possible resultant solicitation(s), grant(s), or cooperative agreement(s); or in the development of future funding opportunity announcements.

This RFI is for information and planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States Federal Government, NIH, or individual NIH Institutes, Centers, and Offices to provide support for any ideas identified in response to it. The federal government will not pay for the preparation of any information submitted or for the Government's use of such information.

No basis for claims against the U.S. Government shall arise as a result of a response to this RFI or from the Government's use of such information. Additionally, the Government cannot guarantee the confidentiality of the information provided.

Dated: September 24, 2021.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2021–21319 Filed 9–29–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors of the NIH Clinical Center. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the CLINICAL CENTER, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors of the NIH Clinical Center.

Date: October 18, 2021.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate Department of Laboratory Medicine and interviews.

Place: Clinical Center, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Date: October 19, 2021.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate Department of Laboratory Medicine and interviews.

Place: Clinical Center, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ronald Neumann, MD, Senior Investigation, Clinical Center, National Institutes of Health, 10 Center Drive, Bethesda, MD 20892, 301–496–6455, *rneumann@cc.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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: September 24, 2021.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–21204 Filed 9–29–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Mexico Textile and Apparel Imports Approved for the Electronic Certification System (eCERT)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that the certification requirement for certain imports of textile and apparel goods from the United Mexican States (Mexico) that are eligible for preferential tariff treatment under a tariff preference level (TPL) will be accomplished through the Electronic Certification System (eCERT). Specified quantities of certain textile and apparel imports from Mexico that are eligible for preferential tariff treatment under a TPL must have a valid certificate of eligibility with a corresponding eCERT transmission in order for an importer to claim the preferential duty rate. As the Agreement Between the United States of America, the United Mexican States and Canada

(USMCA) requires the use of an electronic system for the transmission of a certificate of eligibility and other documentation related to TPLs for goods imported into the United States, Mexico has coordinated with the United States Government (USG) to implement the eCERT process. Mexico is now ready to participate in this process and transition from the way the USG currently receives certificates of eligibility from Mexico to eCERT. This transition will not change the TPL filing process or requirements applicable to importers of record, who will continue to provide the certificate numbers from Mexico in the same manner as when currently filing entry summaries with U.S. Customs and Border Protection. The format of the certificate of eligibility numbers will remain the same for the corresponding eCERT transmissions.

DATES: The use of the eCERT process for certain Mexican textile and apparel importations eligible for preferential tariff treatment under a TPL will be effective for certain textile and apparel goods entered, or withdrawn from a warehouse, for consumption on or after October 5, 2021.

FOR FURTHER INFORMATION CONTACT: For quota-related questions, contact Julia Peterson, Chief, Quota and Agriculture Branch, Trade Policy and Programs, Office of Trade, (202) 384–8905, or *HQQUOTA@cbp.dhs.gov.* For questions related to the TPL provisions, contact Anita Harris, Chief, Textile Policy Branch, Trade Policy and Programs, Office of Trade, (202) 604–2151, or *OTTEXTILE_POLICY_ENF@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Agreement Between the United States of America, the United Mexican States and Canada (USMCA), Section C (Preferential Tariff Treatment for Non-Originating Goods of another Party) of Annex 6–A of Chapter 6 (Textile and Apparel Goods) allows for preferential tariff treatment under a tariff-preference level (TPL) of specified annual quantities of certain textile and apparel goods from the United Mexican States (Mexico) for import into the United States. The TPLs for textile and apparel goods from Mexico set forth in U.S. Note 11 of subchapter XXIII of Chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS) are derived from Annex 6–A of Chapter 6 of the USMCA. Pursuant to Section C of Annex 6–A of the USMCA, the USMCA country where the good is being imported may require a document issued by the competent authority of a USMCA country, such as a certificate of eligibility, to provide information demonstrating that the good qualifies for duty-free treatment under a TPL, to track allocation and use of a TPL, or as a condition to grant duty-free treatment to the good under a TPL. Each USMCA country must notify the other USMCA countries if it requires a certificate of eligibility or other documentation. CBP has determined that TPLs under the USMCA will be administered using a certificate of eligibility. A TPL is a quantitative limit for certain non-originating textile or apparel goods that may be entitled to preferential tariff treatment based on the goods meeting certain requirements, as specified by the USMCA and CBP. A USMCA country will manage each TPL on a first-come, first-served basis, and will calculate the quantity of goods that enter under a TPL on the basis of its imports.

The Electronic Certification System (eCERT) is a system developed by CBP that uses electronic data transmissions of information normally associated with a required export document, such as a license or certificate, to facilitate the administration of TPLs and ensure that the proper restraint levels are charged without being exceeded. Mexico currently submits certificates of eligibility to CBP via email, and in the administration of the TPL, CBP validates these certificates with the certificate numbers provided by importers of record (importers) on their entry summaries. Paragraph 14 of Section C of Annex 6–A of the USMCA requires that the parties to the agreement establish a secure system for electronic transmission of certificates of eligibility or other documentation related to TPL utilization, as well as for sharing information in real time related to allocation and utilization of TPLs. CBP has coordinated with Mexico to implement the eCERT process, and now Mexico is ready to participate in this process by transmitting its certificates of eligibility to CBP via eCERT.

Foreign countries participating in eCERT transmit information via a global network service provider, which allows connectivity to CBP's automated electronic system for commercial trade processing, the Automated Commercial Environment (ACE). Specific data elements are transmitted to CBP by the importer (or an authorized customs broker) when filing an entry summary with CBP, and those data elements must match eCERT data from the foreign country before an importer may claim the preferential duty rate under a TPL. An importer may claim a preferential duty rate when merchandise is entered, or withdrawn from warehouse, for consumption, only if the information transmitted by the importer matches the information transmitted by the foreign government. If there is no transmission by the foreign government upon entry summary, an importer must claim the most-favored nation (MFN) rate of duty.[1] An importer may subsequently claim the preferential duty rate under certain limited conditions.[2]

This document announces that Mexico will be implementing the eCERT process for transmitting certificates of eligibility for certain textile and apparel entries that are eligible for preferential tariff treatment under a TPL. Imported merchandise that is entered, or withdrawn from warehouse, for consumption on or after October 5, 2021, must match the eCERT transmission of a certificate of eligibility from Mexico in order for an importer to claim the preferential duty rate. The transition to eCERT will not change the TPL filing process or requirements. Under this process, importers will continue to provide the certificate of eligibility numbers from Mexico in the same manner as when currently filing entry summaries with CBP. The format of the numbers of certificates of eligibility will not change as a result of the transition to eCERT. CBP will reject entry summaries that claim a preferential duty rate under a TPL when filed without a valid certificate of eligibility in eCERT.

Dated: September 24, 2021.

AnnMarie R. Highsmith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2021–21229 Filed 9–29–21; 8:45 am]

BILLING CODE 9111–14–P

[1] If there is no associated foreign government eCERT transmission available upon the filing of the entry summary, an importer may enter the merchandise for consumption subject to the MFN rate of duty or opt not to enter the merchandise for consumption at that time (*e.g.,* transfer the merchandise to a customs bonded warehouse or foreign trade zone or export or destroy the merchandise).

[2] An importer has the opportunity to make a post-importation claim for a TPL by requesting a refund of any excess customs duties at any time within one year after the date of importation of the goods. However, the preferential duty rate is allowable only if there are still amounts available within the original TPL period.

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2002–11602]

Extension of Agency Information Collection Activity Under OMB Review: Security Programs for Foreign Air Carriers

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0005, abstracted below, to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. This information collection is mandatory for foreign air carriers and must be submitted prior to entry into the United States.

DATES: Send your comments by November 1, 2021. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection, OMB control number 1652–0005, by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 14, 2021, 86 FR 26540.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Security Programs for Foreign Air Carriers.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0005.

Forms(s): N/A.

Affected Public: Foreign air carriers.

Abstract: TSA uses the information collected to determine compliance with 49 CFR part 1546 and to ensure passenger safety by monitoring foreign air carrier security procedures. Foreign air carriers must carry out security measures to provide for the safety of persons and property traveling on flights provided by the foreign air carrier against acts of criminal violence and air piracy, and the introduction of unauthorized explosives, incendiaries, or weapons aboard an aircraft. The foreign air carrier's security program must provide a level of protection similar to the level of protection provided by U.S. aircraft operators serving the same airports, and the foreign air carrier must employ procedures equivalent to those required of U.S. aircraft operators serving the same airport, if TSA determines such procedures are necessary to provide a similar level of protection. This information collection is mandatory for foreign air carriers and must be submitted prior to entry into the United States. The TSA information collection includes providing information to TSA as set forth in the carrier's security program, which includes any amendments; maintaining records of compliance with 49 CFR part 1546 and the foreign air carrier's security program, including security training records; suspicious incident reporting; and submitting identifying information on foreign air carriers' flight crews and passengers.

Number of Respondents: 180.

Estimated Annual Burden Hours: An estimated 277,147 hours annually.[1]

Dated: September 24, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–21284 Filed 9–29–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Law Enforcement (LEO) Reimbursement Request

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0063, abstracted below, to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the reimbursement of expenses incurred by airport operators for the provision of law enforcement officers (LEOs) to support airport security checkpoint screening.

DATES: Send your comments by November 1, 2021. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive,

[1] Since the publication of the 60-day notice, TSA has updated the annual burden hours from 277,247 to 277,147.

Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 10, 2021, at 86 FR 24880.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: LEO Reimbursement Request.

Type of Request: Extension of currently approved collection.

OMB Control Number: 1652–0063.

Form(s): LEO Reimbursement Request—Invoice.

Affected Public: Airport owner/operators.

Abstract: TSA has authority to enter into agreements with airport operators to reimburse expenses they incur for the provision of LEOs in support of screening at airport security checkpoints. *See* 49 U.S.C. 114(m), which grants TSA the same authorities as the Federal Aviation Administration under 49 U.S.C. 106(*l*) and (m). To implement this authority, TSA created the LEO Reimbursement Program. TSA requires that participants in the LEO Reimbursement Program record the details of all reimbursements sought on the LEO Reimbursement Request—Invoice form. TSA will use this form to provide for the orderly tracking of reimbursements.

Number of Respondents: 294.

Estimated Annual Burden Hours: An estimated 3,528 hours annually.

Dated: September 24, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–21218 Filed 9–29–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Crew Member Self-Defense Training—Registration and Evaluation

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0028, abstracted below, to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves requesting information from flight and cabin crew members of air carriers to participate in voluntary advanced self-defense training provided by TSA. Each crew member will also be required to complete an electronic Injury Waiver Form. Additionally, each participant is asked to voluntarily complete an anonymous course evaluation at the conclusion of the training.

DATES: Send your comments by November 1, 2021. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 3, 2021, 86 FR 23420.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Crew Member Self-Defense Training—Registration and Evaluation.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0028.

Forms(s): ''Web enabled Registration Form''; ''Injury Waiver Form''; ''Attendance Roster''; ''Electronic Feedback Tab''.

Affected Public: Flight and cabin crew members on passenger, private charter and cargo flights.

Abstract: TSA is seeking an extension of the ICR, currently approved under OMB control number 1652–0028, to continue compliance with a statutory mandate. Under 49 U.S.C. 44918(b), TSA is required to develop and provide a voluntary advanced self-defense training program for flight and cabin crew members of U.S. air carriers providing scheduled passenger air transportation.[1]

[1] TSA also offers this training to cargo and private and public charter flight crew members.

TSA currently collects biographical information from crew members to confirm their eligibility to participate in this training program and to confirm their attendance. TSA confirms the eligibility of the participant by contacting the participant's employer, and confirms attendance by comparing the registration information against a sign-in sheet provided in the classroom. In addition, TSA asks each crew member to complete an Injury Waiver Form during the registration process, or before the training is conducted. Finally, TSA asks trainees to complete a voluntary evaluation of the training upon completion of the course.

Number of Respondents: 3,500.

Estimated Annual Burden Hours: An estimated 111 hours annually.[2]

Dated: September 24, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–21220 Filed 9–29–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–54]

30-Day Notice of Proposed Information Collection: Protection and Enhancement of Environmental Quality; OMB Control No: 2506–0177

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* November 1, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 25, 2021 at 86 FR 33333.

A. Overview of Information Collection

Title of Information Collection: 24 CFR part 50—Protection and Enhancement of Environmental Quality.

OMB Approval Number: 2506–0177.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: HUD requests its applicants to supply environmental information that is not otherwise available to HUD staff for the environmental review on an applicant's proposal for HUD financial assistance to develop or improve housing or community facilities. HUD itself must perform an environmental review for the purpose of compliance with its environmental regulations found at 24 CFR part 50, Protection and Enhancement of Environmental Quality. Part 50 implements the National Environmental Policy Act and implementing procedures of the Council on Environmental Quality, as well as the related federal environmental laws and executive orders. HUD's agency-wide provisions—24 CFR 50.3(h)(1) and 50.32—regulate how individual HUD program staffs are to utilize such collected data when HUD itself prepares the environmental review and compliance. Separately, individual HUD programs each have their own regulations and guidance implementing environmental and related collection responsibilities. For the next three years, this approved collection will continue unchanged under this OMB control number to assure adequate coverage for all HUD programs subject to Part 50.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total to respondents	128	1	128	3	384.00	$46.72	$17,940.48
Total to Federal govt.*	1,572	1	1,572	3	4,716.00	46.72	220,331.52
Total*	1,700	1	1,700	3	5,100	46.72	238,272.00

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) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated 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.

[2] Since the publication of the 60-day notice, TSA updated the annual burden hours from 361.67 to 111 hours.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–21434 Filed 9–29–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IRTM–2021–0110; FF10T90000 212 FXGO1664101EST0; OMB Control Number 1018–New]

Agency Information Collection Activities; U.S. Fish and Wildlife Service ArcGIS Online (AGOL) Platform

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection in use without an Office of Management and Budget (OMB) control number.

DATES: Interested persons are invited to submit comments on or before November 29, 2021.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods:

- *Internet (preferred): http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IRTM–2021–0110.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

Please reference OMB Control Number ''1018–AGOL'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320, all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Service collects and maintains necessary geospatial data to meet our mission in accordance with the Federal Funding Accountability and Transparency Act of 2006, as amended (31 U.S.C. 6101); Geospatial Data Act of 2018 (43 U.S.C. chapter 46, 2801–2811); National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113); Open, Public, Electronic, and Necessary (OPEN) Government Data Act; Title II of the Foundations for Evidence-Based Policymaking Act of 2018 (Pub. L. 115–435); OMB Circular A–16, ''Coordination of Geographic Information and Related Spatial Data Activities''; OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities''; and OMB Circular A–130, ''Managing Information as a Strategic Resource.''

Geospatial data identifies and depicts geographic locations, boundaries, and characteristics of features on the surface of the earth. Geospatial data includes geographic coordinates (*e.g.,* latitude and longitude) to identify the location of earth's features, and data associated to geographic locations (*e.g.,* land survey data and land cover type data). The Service's organizational ArcGIS online program (AGOL), accessed at *http://fws.maps.arcgis.com,* is an easy place to share data with the public and partners, as well as internally among Service staff. It can also be used to build and deploy mobile-enabled online maps, applications, and services for geographic information systems (GIS) users and non-GIS users alike. Sensitive data is restricted from public access via an internal-facing intranet version of AGOL. Moreover, because the system contains only controlled unclassified information (CUI) that would be designated as low impact under the Federal Information Security Act (FISMA; 2002), no personally identifiable information (PII) is allowed within the system.

The AGOL platform enables the Service to effectively manage geospatial data resources and technology to successfully deliver geospatial services in support of the Service's mission. Data collected through AGOL enables improved visualization, analysis, interoperability, modeling, sharing, and decision support. The benefits include increased accuracy, increased productivity, and more efficient information management and application support.

In addition to collecting name and contact information, additional comments about the submission, and photographs (optional), we collect the following types of data from our partners through AGOL to improve our online maps, web-mapping applications, and story maps (data collected is specific to a particular project; we will not collect all data types below with each submission):

• Road crossing data, to include data such as location data, global positioning system (GPS) coordinates, stream name and stream flow, road name, structure type and quantity, road surface type and condition, issues present at crossing, and name and contact.

• Stream crossing data, to include data such as location/description, GPS coordinates, crossing type, structures/barriers, inlet/outlet information, and stream flow type and condition.

• Conservation project data, to include data such as project title and description, partner names and contact information, start and end dates for project, whether project is new or updated, cost of project, relevant website information, geographical location of project, project species data, project strategy (*e.g.,* protect habitat, reduce human conflicts, climate change, etc.), and links to project reports.

• Reporting locations and/or status of Service assets (such as trails, roads, gates, etc.), invasive species, dead animals, trash on public lands, and possible hazards.

• Observations of wildlife occurrences, including location, species, observer, counts, and other physical characteristics of interest.

• Vegetation monitoring data, which would include the condition of the resource, abundance, lifeform, and more.

We use the information collected from our partners to support critical geospatial services for Service programs/functions, such as:

Endangered Species and Fisheries & Habitat Conservation

• Monitoring the extent and status of wetlands for management, research, policy development, education, and planning through the National Wetland Inventory.

• Performing Natural Resources Damage Assessments, including evaluating exposure of trust species to toxic spills.

• Proposing, designating, and informing the public about critical habitat for threatened & endangered (T&E) species and delivering official species lists and Section 7 consultations.

• Providing information about sensitive resources (T&E species, Refuges, critical habitat) within the vicinity of a proposed project.

• Conducting large-scale, multidisciplinary, multi-species analysis for habitat conservation and landscape conservation planning and restoration.

• Improving fish passage and modeling the effects of barrier removal.

Migratory Bird Conservation

• Conducting bird surveys: Survey design, navigation GPS files for pilots, and spatially referenced survey data.

• Assessing habitat conditions and monitoring habitat improvement projects in joint ventures.

• Conducting research on relationships between bird abundance/productivity and habitat quantity and quality, and migration movement patterns.

National Wildlife Refuge System

• Developing alternatives for comprehensive conservation plans and supporting National Wildlife Refuge System (System) operational activities, including asset management, law enforcement, water resources, and fire management.

• Mapping realty transactions and land status of Service properties and proposed expansions.

• Analyzing strategic growth and land acquisition planning opportunities for the System.

• Conducting biological surveys and managing data, including inventory and monitoring, invasive species control, and habitat management plans.

• Managing Service infrastructure and assets.

• Planning, responding, and mitigating impacts from natural disasters such as wildfire, hurricanes, disease outbreaks, and more.

• Producing visitor service materials (maps, brochures) for public use and engagement of System lands.

Landscape Conservation Cooperatives

• Evaluating, planning, and implementing strategic habitat conservation and adaptive management at the landscape level.

• Performing biological planning, conservation design and delivery, monitoring, and research for climate change and other stressors at the landscape level.

Title of Collection: U.S. Fish and Wildlife Service ArcGIS Online (AGOL) Platform.

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents/Affected Public: Private sector; State, local, and Tribal governments; and/or foreign governments.

Total Estimated Number of Annual Respondents: 300.

Average Number of Responses per Respondent: 5.

Total Estimated Number of Annual Responses: 1,500.

Estimated Average Completion Time per Response: 5 minutes, depending on activity.

Total Estimated Number of Annual Burden Hours: 125 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2021–21278 Filed 9–29–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2021–0057]

Notice of Intent To Prepare an Environmental Impact Statement for the Atlantic Shores Offshore Wind Projects Offshore New Jersey

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: Consistent with the regulations implementing the National Environmental Policy Act (NEPA), BOEM announces its intent to prepare an EIS for the review of a construction and operations plan (COP) submitted by Atlantic Shores Offshore Wind, LLC, (Atlantic Shores) for its Atlantic Shores Offshore Wind Projects. The COP proposes the development, construction, and operation of two wind energy projects (Project 1 and Project 2 or, collectively, the Projects) offshore New Jersey with transmission cables making landfall in either Atlantic City, New Jersey, Sea Girt, New Jersey, or both. This NOI announces the EIS scoping process for the Atlantic Shores COP. Additionally, this NOI seeks public comment and input under section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations. Detailed information about the proposed Projects, including the COP, can be found on BOEM's website at: *https://www.boem.gov/atlantic-shores.*

DATES: Comments received by November 1, 2021, will be considered.

BOEM will hold virtual public scoping meetings for the Atlantic Shores EIS at the following dates and times (eastern time):

- Tuesday, October 19, 5:00 p.m.
- Thursday, October 21, 1:00 p.m.; and
- Monday, October 25, 5:00 p.m.

Registration for the virtual public meetings may be completed here: *https://www.boem.gov/Atlantic-Shores-Scoping-Virtual-Meetings.*

ADDRESSES: Written comments can be submitted in any of the following ways:

- Delivered by mail or delivery service, enclosed in an envelope labeled ''ATLANTIC SHORES COP EIS,'' and addressed to Program Manager, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or
- Through the *regulations.gov* web portal: Navigate to *http://www.regulations.gov* and search for Docket No. BOEM–2021–0057. Select the document in the search results on which you want to comment, click on the ''Comment'' button, and follow the online instructions for submitting your comment. A commenter's checklist is available on the comment web page. Enter your information and comment, then click ''Submit.''

FOR FURTHER INFORMATION CONTACT: Michelle Morin, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1722 or *michelle.morin@boem.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of and Need for the Proposed Action

In Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad,* issued on January 27, 2021, President Biden stated that it is the policy of the United States ''to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.''

Through a competitive leasing process conducted under 30 CFR 585.211, BOEM awarded US Wind, LLC, the Commercial Lease OCS–A 0499 covering an area offshore New Jersey (the Lease Area). The lease was subsequently assigned to EDF Renewables Development, Inc., on November 16, 2018, and then to Atlantic Shores on August 13, 2019. Atlantic Shores has the exclusive right to submit a COP for activities within the Lease Area. Atlantic Shores submitted a COP to BOEM proposing the construction and installation, operations and maintenance, and conceptual decommissioning of two electrically distinct offshore wind energy Projects in the Lease Area.

Atlantic Shores' purpose and need is to develop two offshore wind energy generation Projects in the Lease Area to provide clean, renewable energy to the New Jersey electrical grid. The Projects would include up to 200 total wind turbine generators (WTGs) (between 105–136 WTGs for Project 1 and between 64–95 WTGs for Project 2), up to 10 offshore substations (up to five in each project), one permanent meteorological (met) tower, up to four temporary meteorological and oceanographic (metocean) buoys (one met tower and up to three metocean buoys in Project 1 and one metocean buoy in Project 2), inter-array and inter-link cables, up to two onshore substations, one operations and maintenance facility, and up to eight transmission cables making landfall at up to two New Jersey locations: The Atlantic Landfall site in Atlantic City, New Jersey, Monmouth Landfall site in Sea Girt, New Jersey, or both.

The Projects would contribute to New Jersey's goal of 7.5 gigawatts (GW) of offshore wind energy generation by 2035 as outlined in New Jersey Governor's Executive Order No. 92, issued on November 19, 2019. Project 1 would fulfill the New Jersey Board of Public Utilities September 10, 2020, solicitation and subsequent June 30, 2021, award to Atlantic Shores for 1,510 megawatts (MW) of offshore wind capacity. Atlantic Shores is actively seeking additional offshore wind renewable energy certificate awards or purchase power agreements for Project 2. The Projects are intended to contribute substantially to the region's electrical reliability and to help New Jersey achieve its renewable energy goals.

Based on the goals of the applicant, BOEM's authority, and Executive Order 14008, the purpose of BOEM's action is to determine whether to approve, approve with modifications, or disapprove Atlantic Shores COP to construct and install, operate and maintain, and decommission two electrically distinct, commercial-scale, offshore wind energy Projects within the Lease Area (the Proposed Action). BOEM's action is needed to further the United States policy to make Outer Continental Shelf (OCS) energy resources available for expeditious and orderly development, subject to environmental safeguards (43 U.S.C. 1332(3)), including consideration of natural resources, safety of navigation, and existing ocean uses.

In addition, the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) anticipates receipt of one or more requests for authorization to take marine mammals incidental to activities related to the Projects under the Marine Mammal Protection Act (MMPA). NMFS issuance of an MMPA incidental take authorization is a major Federal action and, in relation to BOEM's action, is considered a connected action (40 CFR 1501.9(e)(1)). The purpose of the NMFS action—which is a direct outcome of Atlantic Shores' request for authorization to take marine mammals incidental to specified activities associated with the Projects (*e.g.,* pile driving)—is to evaluate the applicant's request pursuant to specific requirements of the MMPA and its implementing regulations administered by NMFS, considering impacts of the applicant's activities on relevant resources, and if appropriate, issue the authorization. NMFS needs to render a decision regarding the request for authorization due to its responsibilities under the MMPA (16 U.S.C. 1371(a)(5)(D)) and its implementing regulations. If, after independent review, NMFS makes the findings necessary to issue the requested authorization, NMFS intends to adopt BOEM's EIS to support that decision and fulfill its NEPA requirements.

The U.S. Army Corps of Engineers, Philadelphia District, (USACE) anticipates a permit action to be undertaken, through authority delegated to the District Engineer by 33 CFR 325.8, under section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403) and section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). In addition, it is anticipated that a section 408 permission will be required pursuant to section 14 of the RHA (33 U.S.C. 408) for any proposed alterations that have the potential to alter, occupy, or use any federally authorized civil works project. The USACE considers issuance of a permit or permission under these three delegated authorities a major Federal action connected to BOEM's Proposed Action (40 CFR 1501.9(e)(1)).

The applicant's stated purpose and need for the projects as indicated above is to provide two commercially viable

offshore wind energy Projects within Lease OCS–A 0499 to help New Jersey achieve its renewable energy goals. The basic Projects' purpose, as determined by USACE for section 404(b)(1) guidelines evaluation, is offshore wind energy generation. The overall Projects' purpose for section 404(b)(1) guidelines evaluation, as determined by USACE, is the construction and operation of commercial-scale, offshore wind energy Projects for renewable energy generation and distribution to the New Jersey energy grid. The purpose of the USACE section 408 action, as determined by EC 1165–2–220, is to evaluate the applicant's request and determine whether the proposed alterations are injurious to the public interest or impair the usefulness of the USACE project. The USACE section 408 permission is needed to ensure that congressionally authorized projects continue to provide their intended benefits to the public.

USACE intends to adopt BOEM's EIS to support its decision on any permits and permissions requested under section 10 of the RHA, section 404 of the CWA, and section 14 of the RHA. The USACE would adopt the EIS pursuant to 40 CFR 1506.3 if, after its independent review of the document, it concludes that the EIS satisfies the USACE's comments and recommendations. Based on its participation as a cooperating agency and its consideration of the final EIS, the USACE would issue a record of decision to formally document its decision on the Proposed Action.

Preliminary Proposed Action and Alternatives

The Proposed Action is to develop two electrically distinct, offshore, wind energy generation Projects in the Lease Area to provide clean, renewable energy to the New Jersey electrical grid. The Proposed Action would include up to 200 total WTGs (between 105–136 WTGs for Project 1 and between 64–95 WTGs for Project 2), up to 10 offshore substations (up to five in each Project), one permanent met tower, up to four temporary metocean buoys (one met tower and up to three metocean buoys in Project 1 and one metocean buoy in Project 2), inter-array and inter-link cables, up to two onshore substations, one operations and maintenance facility, and up to eight transmission cables making landfall at up to two New Jersey locations: The Atlantic Landfall site in Atlantic City, New Jersey, the Monmouth Landfall site in Sea Girt, New Jersey, or both.

Atlantic Shores expects WTG and offshore substation foundations to consist of either gravity-based jackets, monopiles, suction buckets, or a combination of them. The WTGs, offshore substations, array cables, and substation interconnector cables would be located on the OCS approximately 8.7 miles (mi) (14 kilometers (km)) from the New Jersey shoreline at its closest point. The offshore transmission cables would be buried below the seabed of both the OCS and New Jersey state waters.

If any reasonable alternatives are identified during the scoping period, BOEM will evaluate those alternatives in the draft EIS, which will also include a no action alternative. Under the no action alternative, BOEM would disapprove the COP and the Atlantic Shores' Projects described in the COP would not be built in the Lease Area.

After BOEM completes the EIS, BOEM will decide whether to approve, approve with modification, or disapprove the Atlantic Shores COP. If BOEM approves the COP and the Projects are constructed, the lessee must submit a plan to decommission the Projects before the end of the lease term.

Summary of Expected Impacts

The draft EIS will identify and describe the effects of the Proposed Action and the alternatives on the human environment that are reasonably foreseeable and have a reasonably close causal relationship to the Proposed Action and alternatives. This includes such effects that occur at the same time and place as the Proposed Action and alternatives and such effects that are later in time or not at the same place. Expected impacts include, but are not limited to, impacts (both beneficial and adverse) on air quality, water quality, bats, benthic habitat, essential fish habitat, invertebrates, finfish, birds, marine mammals, terrestrial and coastal habitats and fauna, sea turtles, wetlands and other waters of the United States, commercial fisheries and for-hire recreational fishing, cultural resources, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other marine uses, recreation and tourism, and visual resources. The effects of these expected impacts will be analyzed in the draft and final EIS.

Based on a preliminary evaluation of these resources, BOEM expects impacts on sea turtles and marine mammals from underwater noise caused by construction and from collisions with vessel traffic associated with the Projects. Structures installed for the Projects could permanently change benthic habitat and other fish habitat. Commercial fisheries and for-hire recreational fishing could be impacted. The Projects' structures above the water could affect the visual character defining historic properties and recreational and tourism areas. The Projects' structures also would pose an allision and height hazard to vessels passing close by, and vessels would in turn pose a hazard to the structures. Additionally, the Projects could adversely impact mineral extraction, military use, air traffic, land-based radar services, cables and pipelines, and scientific surveys. Beneficial impacts are also expected by facilitating achievement of State renewable energy goals, increasing job opportunities, improving air quality, and reducing carbon emissions. The EIS will analyze measures that would avoid, minimize, or mitigate environmental effects.

Anticipated Permits and Authorizations

In addition to the requested COP approval, various other Federal, State, and local authorizations will be required for the Projects. These include authorizations under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, MMPA, NHPA, RHA, CWA, Coastal Zone Management Act, and other laws and regulations determined to be applicable to the Projects. BOEM will also conduct government-to-government Tribal consultations. For a full listing of regulatory requirements applicable to the Projects, please see the COP, volume I, available at *https://www.boem.gov/atlantic-shores.*

BOEM has chosen to use the NEPA substitution process to fulfill its obligations under NHPA. While BOEM's obligations under NHPA and NEPA are independent, the regulations implementing NHPA allow for the use of NEPA review to substitute for various aspects of NHPA's section 106 (54 U.S.C. 306108) review to improve efficiency, promote transparency and accountability, and support a broadened discussion of potential effects that a project could have on the human environment. As provided in 36 CFR 800.8(c), the NEPA process and documentation required for the preparation of an EIS and record of decision (ROD) can be used to fulfill a lead Federal agency's NHPA section 106 review obligations in lieu of the procedures set forth in 36 CFR 800.3 through 800.6. During preparation of the EIS, BOEM will ensure that the NEPA substitution process will meet its NHPA obligations necessary to successfully use this alternative process.

Schedule for the Decision-Making Process

After the draft EIS is completed, BOEM will publish a notice of availability (NOA) and request public comments on the draft EIS. BOEM expects to issue the NOA in November 2022. After the public comment period ends, BOEM will review and respond to comments received and will develop the final EIS. BOEM expects to make the final EIS available to the public in August 2023. A ROD will be completed no sooner than 30 days after the final EIS is released, in accordance with 40 CFR 1506.11.

This COP is a ''covered project'' under section 41 of the Fixing America's Surface Transportation Act (FAST–41). FAST–41 provides increased transparency and predictability by requiring Federal agencies to publish comprehensive permitting timetables for all covered projects. FAST–41 also provides procedures for modifying permitting timetables to address the unpredictability inherent in the environmental review and permitting process for significant infrastructure projects. To view the FAST–41 Permitting Dashboard for the Projects, visit: *https://www.permits.performance.gov/permitting-project/atlantic-shores-project-1.*

Scoping Process

This NOI commences the public scoping process to identify issues and potential alternatives for consideration in the Atlantic Shores EIS. Throughout the scoping process, Federal agencies; Tribal, State, and local governments; and the general public have the opportunity to help BOEM determine significant resources and issues, impact-producing factors, reasonable alternatives (*e.g.,* size, geographic, seasonal, or other restrictions on construction and siting of facilities and activities), and potential mitigation measures to be analyzed in the EIS, as well as to provide additional information. In the interests of efficiency, completeness, and facilitating public involvement, BOEM will use the NEPA process to fulfill public involvement requirements established in 36 CFR 800.2(d).

BOEM will hold virtual public scoping meetings for the Atlantic Shores EIS at the following dates and times (eastern time):

- Tuesday, October 19, 5:00 p.m.;
- Thursday, October 21, 1:00 p.m.; and
- Monday, October 25, 5:00 p.m.

Registration for the virtual public meetings may be completed here: *https://www.boem.gov/atlantic-shores-Scoping-Virtual-Meetings.*

NEPA Cooperating Agencies

BOEM invites other Federal agencies, Tribes, and State and local governments to consider becoming cooperating agencies in the preparation of this EIS. The Council on Environmental Quality (CEQ) NEPA regulations specify that qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and should be aware that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process.

Upon request, BOEM will provide potential cooperating agencies with a written summary of expectations for cooperating agencies, including schedules, milestones, responsibilities, scope and details of cooperating agencies' contributions, and availability of pre-decisional information. BOEM anticipates this summary will form the basis for a memorandum of agreement between BOEM and any non-Department of the Interior cooperating agency. Agencies also should consider the factors for determining cooperating agency status in CEQ's memorandum titled ''Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act'' of January 30, 2002. This document is available on the internet at: *http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf.*

BOEM, as the lead agency, does not provide financial assistance to cooperating agencies. Even if a governmental entity is not a cooperating agency, it will have opportunities to provide information and comments to BOEM during the public input stages of the NEPA process.

NHPA Consulting Parties

Certain individuals and organizations with a demonstrated interest in the Projects can request to participate as NHPA consulting parties under 36 CFR 800.2(c)(5) based on their legal or economic stake in, or concern for, historic properties affected by the Projects. Before issuing this NOI, BOEM compiled a list of potential consulting parties and invited them to become consulting parties. To become a consulting party, those invited must respond in writing, preferably by the requested response date.

Interested individuals or organizations that did not receive a written invitation can request to be consulting parties by writing to the appropriate staff at ICF International, Inc., which is supporting BOEM in its administration of this review. ICF's contact for this review is Neil Sullivan. He can be reached at 9300 Lee Highway, Fairfax, VA 22031 or *AtlanticShoresSection106@icf.com.* BOEM will determine which interested parties should be consulting parties.

Comments

Federal agencies; Tribal, State, and local governments; and other interested parties are requested to comment on the scope of this EIS, significant issues that should be addressed, and alternatives that should be considered. For information on how to submit comments, see the **ADDRESSES** section above.

BOEM does not consider anonymous comments. Please include your name and address as part of your comment. BOEM makes all comments, including the names, addresses, and other personally identifiable information included in the comment, available for public review online. Individuals can request that BOEM withhold their names, addresses, or other personally identifiable information included in their comment from the public record; however, BOEM cannot guarantee that it will be able to do so. To help BOEM determine whether to withhold from disclosure your personally identifiable information, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your privacy. You also must briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

Additionally, under section 304 of NHPA, BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners. Tribal entities and other parties providing information on historic resources should designate information that they wish to be held as confidential and provide the reasons why BOEM should do so.

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 inspection in their entirety.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

BOEM requests data, comments, views, information, analyses, alternatives, or suggestions on the Proposed Action from the public; affected Federal, Tribal, State, and local governments, agencies, and offices; the scientific community; industry; or any other interested party. Specifically, BOEM requests information on the following topics:

1. Potential effects that the Proposed Action could have on biological resources, including bats, birds, coastal fauna, finfish, invertebrates, essential fish habitat, marine mammals, and sea turtles.

2. Potential effects that the Proposed Action could have on physical resources, including air quality, water quality, and wetlands and other waters of the United States.

3. Potential effects that the Proposed Action could have on socioeconomic and cultural resources, including commercial fisheries and for-hire recreational fishing, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other uses (marine minerals, military use, aviation), recreation and tourism, and scenic and visual resources.

4. Other possible reasonable alternatives to the Proposed Action that BOEM should consider, including additional or alternative avoidance, minimization, and mitigation measures.

5. As part of its compliance with NHPA section 106 (54 U.S.C. 306108) and its implementing regulations (36 CFR part 800), BOEM seeks public comment and input regarding the identification of historic properties within the Proposed Action's area of potential effects and the potential effects on those historic properties from the activities proposed in the COP. BOEM requests feedback from the public and consulting parties on the aforementioned information and any information that supports identification of historic properties under the NHPA. BOEM also solicits proposed measures to avoid, minimize, or mitigate any adverse effects on historic properties. BOEM will present available information regarding known historic properties during the public scoping period at *https://www.boem.gov/atlantic-shores.* BOEM's effects analysis for historic properties will be available for public and consulting party comment in the draft EIS.

6. Information on other current or planned activities in, or in the vicinity of, the Proposed Action, their possible impacts on the Projects, and the Project's possible impacts on those activities.

7. Other information relevant to the Proposed Action and its impacts on the human environment.

To promote informed decision-making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully participate and fully inform BOEM of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and alternatives to the Proposed Action as well as economic, employment, and other impacts affecting the quality of the human environment.

The draft EIS will include a summary that identifies all alternatives, information, and analyses submitted by Federal agencies, Tribal, State, and local governments, and other public commenters during the scoping process for consideration by BOEM, cooperating agencies, and the consulting parties.

Authority: This NOI is published pursuant to NEPA, 42 U.S.C. 4321 *et seq.,* and implementing regulations at 40 CFR 1501.9.

William Yancey Brown,

Chief Environmental Officer, Bureau of Ocean Energy Management.

[FR Doc. 2021–21300 Filed 9–29–21; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 211S180110; S2D2S SS08011000 SX064A000 21XS501520; OMB Control Number 1029–0117]

Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

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 November 29, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail 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 1029–0117 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.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (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.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This collection of information is authorized by Section

507(b) of Public Law 95–87 which provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the mining company, their compliance status and history, and authority to mine the property. This information is used to insure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Title of Collection: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.

OMB Control Number: 1029–0117.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments and businesses.

Total Estimated Number of Annual Respondents: 201.

Total Estimated Number of Annual Responses: 1,665.

Estimated Completion Time per Response: Varies 1 hour to 9 hours, depending activity.

Total Estimated Number of Annual Burden Hours: 4,670.

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.*).

Cecil Slaughter,

Acting Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2021–21291 Filed 9–29–21; 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 1029–0115]

Requirements for Permits and Permit Processing

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 November 29, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail 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 1029–0115 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.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (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.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This collection of information is authorized by part 773 which addresses general and specific requirements for applicants to provide information in the permitting process, and for regulatory authorities to review permit applications, determine permit eligibility, and ascribe permit conditions. Part 773 also contains provisions governing provisionally issued permits, improvidently issued permits, and challenges of ownership or control listings and findings. This information collection also authorizes the collection of permit processing fees approved under OSMRE regulations.

Title of Collection: Requirements for Permits and Permit Processing.

OMB Control Number: 1029–0115.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments and businesses.

Total Estimated Number of Annual Respondents: 950.

Total Estimated Number of Annual Responses: 5,025.

Estimated Completion Time per Response: Varies 1 hour to 32 hours, depending activity.

Total Estimated Number of Annual Burden Hours: 56,078.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $99,000.

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.*).

Cecil Slaughter,

Acting Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2021–21290 Filed 9–29–21; 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 1029–0120]

Nomination and Request for Payment Form for OSMRE's National Technical Training Courses

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 November 29, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail 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 1029–0120 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.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (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.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The form is used to identify and evaluate the training courses requested by students to enhance their job performance, to calculate the number of classes and instructors needed to complete OSMRE's technical training mission, and to estimate costs to the training program.

Title of Collection: Nomination and Request for Payment Form for OSMRE's National Technical Training Courses.

OMB Control Number: 1029–0120.

Form Number: OSM–105.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 970.

Total Estimated Number of Annual Responses: 970.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 81.

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.*).

Cecil Slaughter,

Acting Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2021–21292 Filed 9–29–21; 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 1029–0089]

Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

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 November 29, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail 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 1029–0089 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.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (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.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This Part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16⅔ percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

Title of Collection: Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

OMB Control Number: 1029–0089.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments and businesses.

Total Estimated Number of Annual Respondents: 67.

Total Estimated Number of Annual Responses: 212.

Estimated Completion Time per Response: Varies 1 hour to 30 hours, depending activity.

Total Estimated Number of Annual Burden Hours: 703.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $600.

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.*).

Cecil Slaughter,

Acting Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2021–21289 Filed 9–29–21; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070B (Third Review)]

Tissue Paper From China; Scheduling of Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on tissue paper from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: September 7, 2021.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 7, 2021, the Commission determined that the domestic interested party group response to its notice of institution (86 FR 29289, June 1, 2021) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on September 30, 2021. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 7, 2021 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by October 7, 2021. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the response to its notice of institution filed by Seaman Paper Company of Massachusetts, Incorporated, a domestic producer of certain tissue paper products, to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 27, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2021–21305 Filed 9–29–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Composite Baseball and Softball Bats and Components Thereof, DN 3567;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Easton Diamond Sports, LLC on September 27, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain composite baseball and softball bats and components thereof. The complainant names as respondents: Juno Athletics LLC of Aventura, FL; Monsta Athletics LLC of Calimesa, CA; and Proton Sports Inc. of Scottsdale, AZ. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3567'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov*.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 27, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2021–21313 Filed 9–29–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Tunable Lenses and Products Containing the Same, DN 3566;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Holochip Corp. on September 27, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tunable lenses and products containing the same. The complainant names as respondents: Optotune AG of Switzerland; and Edmund Optics, Inc. of Barrington, NJ. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3566'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 27, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2021–21312 Filed 9–29–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0060]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; Firearms Disabilities for Nonimmigrant Aliens

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-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.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—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:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Firearms Disabilities for Nonimmigrant Aliens.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: 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: Individuals or households.

Abstract: Nonimmigrant alien information will be used to determine their eligibility to obtain a Federal firearms license, and/or purchase, obtain, possess, or import a firearm. Nonimmigrant aliens must also maintain these documents while in possession of firearms or ammunition in the United States, for verification purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,970 respondents will provide information for this information collection once each year, and it will take each respondent approximately 4.08 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 133.96 or 134 hours, which is equal to 1,970 (# of respondents) * .068 (5.08 minutes).

(7) *An explanation of the change in estimates:* The increase in the total responses and burden hours by 536, and 36 hours respectively since the last renewal of this information collection in 2018, are due to more nonimmigrant aliens applying to obtain and renew federal firearms licenses.

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: September 24, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–21216 Filed 9–29–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0067]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-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.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—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:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: 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: None.

Abstract: Firearms manufacturers must create and maintain permanent records of all firearms manufactured and disposed of. These records support the Bureau of Alcohol, Tobacco, Firearms and Explosives' mission to inquire into the disposition of any firearm, during the course of a criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,513 respondents will respond 677.12822 times per year to this information collection, and it will take each respondent approximately 1.06 minutes to complete a 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 123,801 hours, which is equal to 10,513 (# of respondents) * 677.12822 (# of responses per respondent) * .0176728 (1.06 minutes).

(7) *An Explanation of the Change in Estimates:* The increase in total respondents by 1,457, is due to more firearms manufacturers responding to this collection. However, the total responses and burdens hours decreased by 4,378,792 and 75,4040 hours respectively, because less firearms were produced since the last renewal of this collection in 2018.

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: September 24, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–21215 Filed 9–29–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0022]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Extension Without Change of a Currently Approved Collection Federal Explosives License/Permit (FEL) Renewal Application—ATF Form 5400.14/5400.15, Part III

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-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.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension without change of a currently approved collection.

(2) *The title of the form/collection:* Federal Explosives License/Permit (FEL) Renewal Application.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

(4) *Form number:* ATF Form 5400.14/5400.15, Part III.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(5) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households.

Abstract: Explosives licensees and permittees must file the Federal Explosives License/Permit (FEL) Renewal Application—ATF Form 5400.14/5400.15, Part III to maintain a

valid license or permit, to continue engaging in the explosives material business, and/or transporting or buying explosives material in interstate commerce.

(6) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,500 respondents will use the form annually, and it will take each respondent approximately 20 minutes to complete their responses.

(7) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 825 hours, which is equal to 2,500 (# of respondents) * .33 (20 minutes).

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: September 24, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–21217 Filed 9–29–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0031]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Extension Without Change of a Currently Approved Collection Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition and Defense Articles on the U.S. Munitions Import List

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-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.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension without change of a currently approved collection.

(2) *The Title of the Form/Collection:* Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition and Defense Articles on the U.S. Munitions Import List.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: 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: None.

Abstract: This information collection is a record retention requirement for imported items on the United States Munitions Import List. The records are maintained at the registrant's business premises and must be made available to personnel from the Bureau of Alcohol, Tobacco, Firearms and Explosives, during compliance inspections, and/or criminal investigations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50 respondents will use this information collection once per year, and it will take each respondent approximately 5 hours to prepare their 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 250 hours, which is equal to 50 (# of responses) * 5 (# of hours 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: September 24, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–21214 Filed 9–29–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0024]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; Report of Firearms Transactions—Demand 2—ATF Form 5300.5

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-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.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—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:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Report of Firearms Transactions—Demand 2.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5300.5.

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: None.

Abstract: The Demand 2 Program requires Federal Firearm Licensees (FFLs) with 25 or more traces with a time to crime of three years or less in a calendar year, to submit an annual Report of Firearms Transactions—Demand 2—ATF Form 5300.5, followed by quarterly reports of used firearms acquired by the FFL.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 628 respondents will use the form approximately four times annually, and it will take each respondent approximately 30 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,256 hours, which is equal to 628 (# of respondents) * 4 (# of responses per respondent) * .5 (30 minutes).

(7) *An explanation of the change in estimates:* Due to an increase in the number of FFLs subject to the reporting requirements of the Demand 2 program, the total respondents, responses, and burden hours for this collection have increased by 233, 932, and 466 respectively, since the last renewal in 2018.

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: September 27, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–21307 Filed 9–29–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

Tribal Consultation; Workforce Innovation and Opportunity Act, Implementation of the Effectiveness in Serving Employers Performance Indicator

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of tribal consultation; virtual meeting.

SUMMARY: The Department of Labor is announcing that it will be conducting a tribal consultation. This virtual meeting is to obtain input from tribes as the Department of Labor is considering incorporating a standard definition for the effectiveness in serving employers performance indicator in the regulations for the Indian and Native American Programs authorized under the Workforce Innovation and Opportunity Act (WIOA).

DATES: This tribal consultation meeting will take place on Tuesday, October 19, 2021, at 2 p.m. ET.

ADDRESSES: This virtual meeting will be publicly-accessible on the WorkforceGPS, an online technical assistance platform sponsored by the Employment and Training Administration. Registration information for this tribal consultation can be found on *https://www.workforcegps.org/events.*

FOR FURTHER INFORMATION CONTACT: Leo Lestino, Director, Division of Policy, Legislation, and Regulations, Office of Policy Development and Research, Employment and Training Administration at (202) 693–2873.

SUPPLEMENTARY INFORMATION: Under WIOA, there are six primary indicators of performance. Five of the six indicators are currently defined in regulations; however, in the joint final rule implementing WIOA (81 FR 55791) the Departments of Labor and Education (the Departments) determined that it was prudent to test various alternatives for the sixth indicator of performance, which measures the workforce system's effectiveness in serving employers. That process is now complete and the Departments are engaging in a rulemaking to incorporate a standard definition of the performance indicator for effectiveness in serving employers indicator into the WIOA regulations.

In addition, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249), and the Department of Labor's Tribal Consultation Policy (77 FR 71833) require the Department of Labor to solicit input by tribal officials in the development of Federal policies that have tribal implications. Accordingly, this tribal consultation seeks to provide tribes an opportunity to provide input as the Department develops the proposed definition for the effectiveness in serving employers performance indicator in 20 CFR part 684, the regulations governing the Indian and Native American Programs authorized under sec. 166 of WIOA.

Lenita Jacobs-Simmons,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021–21234 Filed 9–29–21; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Annual Information Return/Report of Employee Benefit Plan

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection relates to section 104 of ERISA, which requires administrators of employee benefit pension and welfare plans (collectively referred to as employee benefit plans) to file returns or reports annually with the federal government. The Form 5500 return/reports are the principal source of information and data available to the Department, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation (the Agencies) concerning the operation of employee benefit plans. For this reason, the Form 5500 constitutes an integral part of the Agencies' enforcement, research, and policy formulation programs. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 31, 2021 (86 FR 16787).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Annual Information Return/Report of Employee Benefit Plan.

OMB Control Number: 1210–0110.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 822,134.

Total Estimated Number of Responses: 822,134.

Total Estimated Annual Time Burden: 586,314 hours.

Total Estimated Annual Other Costs Burden: $280,700,898.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 22, 2021.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2021–21237 Filed 9–29–21; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Participant Assistance Program Customer Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this data collection effort is to solicit inquirers' feedback and compile reports on the applicability and utility of EBSA's Participant Assistance Program. The demographic questions in the survey are being updated in response to Executive Order 13985—Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. The new demographic survey information will be used to provide additional training to EBSA benefits advisors in order to better serve the underserved populations that the Department assists. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 21, 2021 (86 FR 38500).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not

display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Participant Assistance Program Customer Survey.

OMB Control Number: 1210–0161.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 11,200.

Total Estimated Number of Responses: 11,200.

Total Estimated Annual Time Burden: 1,867 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 23, 2021.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2021–21240 Filed 9–29–21; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Technical Release 1991–1

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 101(e) of ERISA establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under the conditions set forth in section 420 of the Internal Revenue Code of 1986, as amended (the Code). On May 8, 1991, the Department published ERISA Technical Release 91–1, to provide guidance on how to satisfy the notice requirements prescribed by this section. This information collection involves third-party disclosures and reporting to the federal government. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 31, 2021 (86 FR 16787).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Employee Retirement Income Security Act of 1974 Technical Release 1991–1.

OMB Control Number: 1210–0084.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 6.

Total Estimated Number of Responses: 18,419.

Total Estimated Annual Time Burden: 623 hours.

Total Estimated Annual Other Costs Burden: $839.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 22, 2021.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2021–21236 Filed 9–29–21; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Advisory Opinion Procedure

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who

are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection relates to ERISA Procedure 76–1, which provides specific guidance to the public on issues arising under ERISA, particularly when needed to guide specific transactions involving employee benefit plans and plan assets. The information required by ERISA Procedure 76–1 is used by EBSA to understand and analyze the issues and develop the response, as well as to determine whether EBSA's response should be in the form of an advisory opinion or information letter. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 31, 2021 (86 FR 16787).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Employee Retirement Income Security Act Procedure 1976–1; Advisory Opinion Procedure.

OMB Control Number: 1210–0066.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 18.

Total Estimated Number of Responses: 18.

Total Estimated Annual Time Burden: 182 hours.

Total Estimated Annual Other Costs Burden: $477,089.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 22, 2021.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2021–21235 Filed 9–29–21; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Registration for EFAST–2 Credentials

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: ERISA section 104 requires administrators of pension and welfare plans and employers sponsoring certain fringe benefit plans and other plans of deferred compensation to file reports annually with the Secretary of Labor concerning the financial condition and operation of plans. Reporting requirements are satisfied by filing the Form 5500 in accordance with its instructions and the related regulations. This information collection relates to the ERISA Filing Acceptance System 2 (EFAST–2), which is designed to simplify and expedite the receipt and processing of the Form 5500 by relying on internet-based forms and electronic filing technologies. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 31, 2021 (86 FR 16787).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Registration for EFAST–2 Credentials.

OMB Control Number: 1210–0117.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 248,985.

Total Estimated Number of Responses: 248,985.

Total Estimated Annual Time Burden: 82,995 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 22, 2021.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2021–21238 Filed 9–29–21; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Blackout Period Notice

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Sarbanes-Oxley Act (SOA), enacted on July 30, 2002, amended ERISA to include a blackout period disclosure requirement in subsection 101(i). This information collection requires administrators of individual account pension plans (*e.g.,* a profit sharing plan, 401(k) type plan or money purchase pension plan) to provide at least 30 days advance written notice to the affected participants and beneficiaries in advance of any ''blackout period'' during which their existing rights to direct or diversify their investments under the plan, or obtain a loan or distribution from the plan will be temporarily suspended. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 31, 2021 (86 FR 16787).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Employee Retirement Income Security Act Blackout Period Notice.

OMB Control Number: 1210–0122.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 47,250.

Total Estimated Number of Responses: 7,409,220.

Total Estimated Annual Time Burden: 88,905 hours.

Total Estimated Annual Other Costs Burden: $324,524.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 22, 2021.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2021–21239 Filed 9–29–21; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (21–062)]

NASA Astrophysics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Advisory Committee. This Committee reports to the Director, Astrophysics Division, Science Mission Directorate, NASA Headquarters. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Wednesday, October 13, 2021, 11:00 a.m.–5:00 p.m., Friday, October 15, 2021, 11:00 a.m.–5:00 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, or *khenderson@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be available to the public by WebEx.

On Wednesday, October 13, the event address for attendees is:

https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=md4791048eb7dd22d2f90af9f433f189a, the meeting number is 2762 173 8590, and meeting password is xX3YwJCC@58.

On Friday, October 15, the event address for attendees is:

https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m73f37b368141c16886cc53c24addca86, the meeting number is 2761 353 3834, and meeting password is ayBVNPv23$2.

To join by telephone, the numbers are: 1–929–251–9612 or 1–415–527–5035, for each day.

The agenda for the meeting includes the following topics:

—Astrophysics Division Update

—Updates on Specific Astrophysics Missions

—Reports from the Program Analysis Groups

—Report on Science Activation Program

The agenda will be posted on the Astrophysics Advisory Committee web page: *https://science.nasa.gov/researchers/nac/science-advisory-committees/apac.*

The public may submit and upvote comments/questions ahead of the meeting through the website *https://arc.cnf.io/sessions/m8xp/#!/dashboard* that will be opened for input on September 30, 2021.

It is imperative that the meeting be held on this date to accommodate the

scheduling priorities of the key participants.

Carol J. Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2021–21296 Filed 9–29–21; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 37 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The Upcoming Meetings Are

Dance (review of applications): This meeting will be closed.

Date and time: November 3, 2021; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 3, 2021; 3:00 p.m. to 5:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 4, 2021; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 4, 2021; 3:00 p.m. to 5:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 5, 2021; 3:00 p.m. to 5:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 8, 2021; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 8, 2021; 3:00 p.m. to 5:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 9, 2021; 2:30 p.m. to 4:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 9, 2021; 12:00 p.m. to 2:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 9, 2021; 4:00 p.m. to 6:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 10, 2021; 1:30 p.m. to 3:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 10, 2021; 11:30 a.m. to 1:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 10, 2021; 2:30 p.m. to 4:30 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 10, 2021; 12:00 p.m. to 2:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 10, 2021; 3:00 p.m. to 5:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 12, 2021; 2:30 p.m. to 4:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 12, 2021; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 12, 2021; 3:00 p.m. to 5:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 15, 2021; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 15, 2021; 3:00 p.m. to 5:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 15, 2021; 2:30 p.m. to 4:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 16, 2021; 1:00 p.m. to 3:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 16, 2021; 4:00 p.m. to 6:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 16, 2021; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 16, 2021; 2:30 p.m. to 4:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 17, 2021; 1:30 p.m. to 3:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 17, 2021; 11:30 a.m. to 1:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 17, 2021; 2:30 p.m. to 4:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 18, 2021; 1:00 p.m. to 3:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 18, 2021; 4:00 p.m. to 6:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 18, 2021; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 18, 2021; 2:30 p.m. to 4:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 19, 2021; 1:30 p.m. to 3:30 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: November 22, 2021; 1:00 p.m. to 3:00 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: November 23, 2021; 12:00 p.m. to 2:00 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: November 23, 2021; 3:00 p.m. to 5:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 23, 2021; 1:00 p.m. to 3:00 p.m.

Dated: September 27, 2021.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2021–21259 Filed 9–29–21; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) has submitted the following information collection requirement to the Office of Management Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and NCSES received five comments. NCSES is forwarding the proposed new submission to OMB for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *http://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite 18200, Alexandria, VA 22314 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling 703–292–7556.

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

SUPPLEMENTARY INFORMATION:

Comments: As required by 5 CFR 1320.8(d), comments on the information collection activities as part of this study were solicited through the publication of a 60-Day Notice in the **Federal Register** on April 16, 2020, at 85 FR 21271. We received five (5) comments to the NTEWS (version dated 6/2/2020).

In sum, each of the five comments expressed strong support for the collection and offered suggestions for modified or additional survey content, such as collecting additional details about work credentials or collecting data in a way that would better enable international comparisons. NCSES responded to each commenter individually, providing background information about the survey, its goals for this initial survey cycle, and the feasibility of adding new content. Some of the commenters' suggestions will be incorporated into the non-production bridge panel for this initial survey cycle. NSF is proceeding with the information collection request.

Title of Collection: The National Training, Education, and Workforce Survey.

OMB Control Number: 3145–NEW.

Summary of Collection: The National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) requests a three-year approval for a new collection referred to as the 2022 National Training, Education, and Workforce Survey (NTEWS). The 2022 NTEWS will be a voluntary data collection sponsored by NCSES and cosponsored by the National Center for Education Statistics (NCES) within the U.S. Department of Education. The content of the 2022 NTEWS builds upon NCES's former federal survey, the 2016 Adult Training and Education Survey (ATES). This collection serves to measure and understand two research concepts that are of national interest: (1) the education, training, and career pathways of skilled technical workers, and (2) the prevalence and interplay of education (postsecondary degrees and certificates), work credentials (certifications and licenses), and work experience programs among American workers.

Established within NSF by the America COMPETES Reauthorization Act of 2010 § 505, codified in the NSF Act of 1950, as amended, NCSES serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public.

As the initial NTEWS, the 2022 data collection effort will serve as the baseline cycle for a planned biennial, rotating panel design. Respondents will have the option to complete the survey by web, paper, or computer-assisted telephone interviewing (CATI). NCSES plans to incorporate a couple of methodological experiments to examine response mode and incentive options in the initial administration.

The U.S. Census Bureau will serve as the Federal data collection contractor on behalf of NCSES and NCES. The NTEWS data will be protected under the applicable Census Bureau confidentiality statutes.

Use of the information: NCSES and NCES intend to publish national estimates from the 2022 NTEWS and use the results to inform the next survey cycle. NCSES plans to use the NTEWS data for the two congressionally mandated biennial reports: *Women, Minorities, and Persons with Disabilities in Science and Engineering* and *Science and Engineering Indicators.* NCES plans to release a special-topic statistical report on the status of educational and professional credentials in the United States. Also, a public release file of collected data, designed to protect respondent confidentiality, will be made available to policymakers, researchers, and the public on the internet.

Expected Respondents: NCSES expects an estimated total of 30,565 respondents. With three samples in the 2022 NTEWS collection, the expected number of respondents for each sample is 27,000 respondents from production, 3,125 respondents from the bridge panel, and 440 respondents from the seeded sample. NCSES will select adults ages 16–75 (inclusive) and not enrolled in high school. The production will select its sample from the 2018 American Community Survey, collected by the U.S. Census Bureau. The bridge panel (non-production because data cannot generate official statistics) will select its sample from a commercial list. Finally, the seeded sample (non-production because data will not be released to the public but will be used for NCSES and NCES analysis for future postsecondary certificates measurement improvements) will be chosen from a list of recent postsecondary certificate

awardees from four postsecondary community/technical colleges or systems. The NTEWS sample design will meet the needs of both NCSES and NCES by providing coverage of the workforce-eligible adult population and including an oversample of adults who are in skilled technical occupations.

Estimate of Burden: The expected response rate for the overall NTEWS sample is 62 percent, or 30,565 respondents. The amount of time to complete the survey may vary depending on an individual's circumstances and the collection mode (web, paper, or telephone). NCSES estimates an average completion time of 15 minutes. NCSES estimates that the average annual burden for the initial NTEWS for the three-year OMB clearance period will be no more than 2,547 hours [(30,565 completed cases × 15 minutes)/3 years].

Updates: A few changes occurred between the publication of the first FRN and this second FRN. The first FRN did not include the estimated burden of the non-production seeded sample and bridge panel studies, which are reflected in this FRN. The estimated burden for the production sample in the first FRN approximated the average annual burden for the initial NTEWS throughout the three-year OMB clearance period to be 2,084 hours [(25,000 completed cases × 15 minutes)/3 years]. NCSES increased the production sample size from 42,000 to 43,200 to meet precision requirements for NTEWS estimates. This FRN contains revised burden information.

Comments: Comments are invited on (a) aspects of the data collection effort (including, but not limited to, the following: the availability of administrative and supplemental sources of data on the skilled technical workforce, survey content, contact strategy, and statistical methods); (b) whether the proposed collection of information is necessary for the proper performance of the functions of NCSES, including whether the information shall have practical utility; (c) the accuracy of the NCSES's estimate of the burden of the proposed collection of information; (d) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 27, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–21254 Filed 9–29–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 1, 2021. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, at the above address, 703–292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Publ. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2022–010

1. *Applicant:* Dr. John Durban, 446 Harbor Vista Drive Friday Harbor, WA 98250.

Activity for Which Permit Is Requested: Take, Import into the U.S.A. The Applicant seeks an Antarctic Conservation Act permit for continued research activities studying the health of whale populations in the Southern Ocean and impacts of environmental changes on Antarctic marine ecosystems. The applicant will use aerial photogrammetry to collect data on whale morphometrics and health. The applicant proposes to use unoccupied aerial systems (UAS), particularly small, radio-controlled hexacopters, for aerial photogrammetry, and to use handheld cameras for photo-identification. The hexacopters will be flown greater than 100 ft above the whales for identification and assessment purposes. The applicant also proposes use of the UAS to collect respiratory (blow) samples of commonly encountered whales to aid in understanding of cetacean microbiomes and respiratory health. This data will be supplemented by the collection of remote biopsy samples of whale skin and blubber, which will provide more detailed information on cetacean diet and contribute to genetic understanding of whale populations in the Southern Ocean. Additionally, opportunistic samples of dead marine mammals may be salvaged by the applicant to further understanding of killer whale diet and ecology. Samples will be imported into the United States for analysis and ultimate disposition at the Southwest Fisheries Science Center.

Location: Antarctic Peninsula Region, Southern Ross Sea region.

Dates of Permitted Activities: December 1, 2021–April 30, 2026.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–21201 Filed 9–29–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for NSF NRT Program

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and no comments were received. NSF is forwarding the proposed new submission to the Office of Management and Budget (OMB) for

clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

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

SUPPLEMENTARY INFORMATION: *Title of Collection:* NSF Research Traineeship (NRT) Monitoring Program.

OMB Number: 3145–NEW.

Type of Request: Intent to seek approval to establish an information collection.

Abstract: The National Science Foundation's (NSF's) Division of Graduate Education (DGE) in the Directorate for Education and Human Resources (EHR) administers the NSF Research Traineeship (NRT) program. The NRT program is designed to encourage the development and implementation of bold, new, and potentially transformative models for STEM graduate education training. The NRT program seeks to ensure that graduate students in research-based master's and doctoral degree programs develop the skills, knowledge, and competencies needed to pursue a range of STEM careers. NRT is dedicated to effective training of STEM graduate students in high priority interdisciplinary or convergent research areas, through the use of a comprehensive traineeship model that is innovative, evidence-based, and aligned with changing workforce and research needs.

Currently NRT awardees provide NSF with information on their activities through periodic research performance progress reports. The NRT program will now replace these reports with a tailored program monitoring system that will use internet-based information and communication technologies to collect, review, and validate specific data on NRT awards. EHR is committed to ensuring the efficiency and effectiveness with which respondents provide and NSF staff can access and analyze data on funded projects within the NRT program.

The NRT monitoring system will include subsets of questions aimed at the different project participants (*i.e.,* Principal Investigators (PIs) and trainees), and will allow for data analysis and data report generation by authorized NSF staff. The collections will generally include three categories of descriptive data: (1) Staff and project participants (data that are necessary to determine individual-level treatment and control groups for future third-party study or for internal evaluation); (2) project implementation characteristics (also necessary for future use to identify well-matched comparison groups); and (3) project outputs (necessary to measure baseline for pre- and post-NSF-funding-level impacts). NRT awardees will be required to report data on an annual basis for the life of their award.

Use of the Information: NSF will primarily use the data from this collection for program planning, management, and audit purposes to respond to queries from the Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), the NSF's Office of the Inspector General, and as a basis for either internal or third-party evaluations of individual programs. This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project, and strategic goals, and as identified by the President's Accountability in Government Initiative; GPRA, and the NSF's Strategic Plan. The Foundation's FY 2018–2022 Strategic Plan may be found at: *https://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf18045.*

Since this collection will primarily be used for accountability and evaluation purposes, including responding to queries from COVs and other scientific experts, a census rather than a sampling design typically is necessary. At the individual project level, funding can be adjusted based on individual project's responses to some of the surveys. Some data collected under this collection will serve as baseline data for separate research and evaluation studies.

NSF-funded contract or grantee researchers and internal or external evaluators in part may identify control, comparison, or treatment groups for NSF's education and training portfolio using some of the descriptive data gathered through this collection to conduct well-designed and rigorous research and portfolio evaluation studies.

Use of the Information: The information collected is primarily for the purposes of program monitoring and accountability purposes. The information may also be used to respond to queries from Congress, NSF's external merit reviewers, and as the basis for program evaluations.

Respondents: NRT PIs, coPIs, Faculty, and Trainees.

Estimated number of respondents: 2,346.

Average Burden per Reporting: The average hours per year works out to 4,207.5 hours. This reflects a range of 10–15 minutes for the PI/coPI/Faculty surveys, 1.5 hours for the trainee survey, and 24 hours for the project survey.

Frequency: Once annually

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: September 27, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–21326 Filed 9–29–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 1, 2021. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, at the above address, 703–292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2022–011

1. *Applicant*: Dr. John Durban, 446 Harbor Vista Drive, Friday Harbor WA, 98250.

Activity for Which Permit is Requested: Waste Management. The applicant seeks a waste management permit under the Antarctic Conservation Act for activities associated with ongoing cetacean research in the Southern Ocean and Antarctic Peninsula region. The applicant proposes using unmanned aerial systems (UAS) pilots from ships and small boats to collect photogrammetry images and blow samples from whales. UAS flights will be performed by experienced pilots and will last for a period of under 30 minutes. In addition to the pilots' extensive experience, mitigation measures will be put into place to minimize loss of equipment and to recover equipment in the unlikely event of equipment failure. The applicant also seeks to use small projectile biopsy darts to collect tissue samples. Following discharge and sampling, the darts will float, and high-visibility collars ensure a high likelihood for retrieval.

Location: Antarctic Peninsula Region. Southern Ross Sea Region.

Dates of Permitted Activities: December 1, 2021–April 30, 2026.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–21202 Filed 9–29–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0166]

Acceptability of ASME Code Section XI, Division 2, Requirements for Reliability and Integrity Management (RIM) Programs for Nuclear Power Plants, for Non-Light Water Reactors

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–1383, ''Acceptability of ASME Code Section XI, Division 2, 'Requirements for Reliability and Integrity Management (RIM) Programs for Nuclear Power Plants,' for Non-Light Water Reactors.'' This proposed DG describes an approach that is acceptable to the NRC staff for the development and implementation of a preservice inspection (PSI) and inservice inspection (ISI) program for non-light water reactors (non-LWRs). It endorses, with conditions, the 2019 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (ASME Code), Section XI, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' Division 2, for non-LWR applications. This RG also describes a method that applicants can use to incorporate PSI and ISI programs into a licensing basis.

DATES: Submit comments by November 15, 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–2021–0166. 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: Timothy Lupold, Office of Nuclear Reactor Regulation, telephone: 301–415–6448, email: *Timothy.Lupold@nrc.gov;* Stephen Philpott, Office of Nuclear Reactor Regulation, telephone: 301–415–2365, email: *Stephen.Philpott@nrc.gov;* and Robert Roche-Rivera, Office of Nuclear Regulatory Research, telephone: 301–415–8113, email: *Robert.Roche-Rivera@nrc.gov.* All are staff of the 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–2021–0166 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–2021–0166.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the

ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (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–2021–0166 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, ''Acceptability of ASME Code Section XI, Division 2, 'Requirements for Reliability and Integrity Management (RIM) Programs for Nuclear Power Plants,' for Non-Light Water Reactors,'' is a proposed new Regulatory Guide 1.246 and is temporarily identified by its task number, DG–1383 (ADAMS Accession No. ML21120A185). The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML21120A192).

This DG endorses, with conditions, the 2019 edition of ASME BPV Code, Section XI, Division 2. It also describes a method that applicants can use to incorporate PSI and ISI programs into a licensing basis. ASME BPV Code, Section XI, Division 2 provides a process for developing a RIM program similar to a traditional PSI and ISI program under ASME Code, Section XI, Division 1, ''Rules for Inspection and Testing of Components of Light-Water-Cooled Plants,'' for all types of nuclear power plants. Because ASME Code, Section XI, Division 1, provides requirements for a PSI and ISI program for an LWR, the scope of this DG focuses on non-LWRs. The RIM program contains provisions beyond a traditional program, such as significant use of probabilistic risk assessment (PRA) to develop reliability targets for structures, systems, and components (SSCs) within the scope of the program. It also relies on establishing such practices as monitoring, nondestructive examination and repair and replacement to maintain the reliability of components based on the degradation mechanisms that may exist throughout the life of the plant.

ASME Code, Section XI, Division 2, also provides a process for the identification of the scope, degradation mechanisms, and reliability targets for the in-scope SSCs; identification and evaluation of RIM strategies and uncertainties; program implementation; performance monitoring; and program updates to be applied for passive components to give assurance that the reliability will meet preestablished targets (developed from the PRA information for the facility). ASME Code, Section XI, Division 2, does not stipulate any specific strategies to be employed but calls for these to be developed by expert panels, considering types of examinations currently used for ASME Code, Section XI, Division 1, and known or potential degradation mechanisms for typical materials used in the construction of nuclear facilities.

III. Backfitting, Forward Fitting, and Issue Finality

DG–1383, if finalized, would not constitute backfitting as 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'' (ADAMS Accession No. ML18093B087); constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants.'' As explained in DG–1383, applicants and licensees are not required to comply with the positions set forth in DG–1383.

Dated: September 27, 2021.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2021–21295 Filed 9–29–21; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34384]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 24, 2021.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September 2021. A copy of each application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on October 19, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of

service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

FS Multi-Alternative Income Fund [File No. 811–23338]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant currently has fewer than 100 beneficial owners, is not presently making an offering of securities and does not propose to make any offering of securities. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Date: The application was filed on August 27, 2021.

Applicant's Address: legalnotices@fsinvestments.com.

Hatteras VC Co-Investment Fund II, LLC [File No. 811–22251]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 29, 2021, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $213,900 incurred in connection with the liquidation were paid by the fund's investment adviser, and/or their affiliates.

Filing Date: The application was filed on August 17, 2021.

Applicant's Address: joshua.deringer@faegredrinker.com.

iShares U.S. ETF Company, Inc [File No. 811–22522]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on August 31, 2021.

Applicant's Address: bhaskin@willkie.com.

NexPoint Healthcare Opportunities Fund [File No. 811–23144]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 17, 2020, applicant made liquidating distributions to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Dates: The application was filed on April 24, 2020 and amended on September 1, 2021.

Applicant's Address: Jon-Luc.Dupuy@klgates.com.

Pacific Global Fund, Inc. [File No. 811–07062]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 30, 2020, and April 6, 2020, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $141,570 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on August 20, 2021.

Applicant's Address: bkelley@pgimc.com.

RiverNorth Opportunities Fund II, Inc. [File No. 811–23427]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on August 13, 2021.

Applicant's Address: roykim@chapman.com.

Vivaldi Opportunities Fund [File No. 811–23255]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Angel Oak Financial Strategies Income Term Trust, and on June 5, 2020 made a final distribution to its shareholders based on net asset value. Expenses of $731,250 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser.

Filing Dates: The application was filed on July 12, 2021 and amended on September 13, 2021.

Applicant's Address: joshua.deringer@faegredrinker.com.

Western Asset Municipal Defined Opportunity Trust Inc. [File No. 811–22265]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 3, 2021, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $30,054.75 incurred in connection with the liquidation were paid by the applicant.

Filing Dates: The application was filed on July 22, 2021 and amended on September 2, 2021.

Applicant's Address: george.hoyt@franklintempleton.com.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21206 Filed 9–29–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93125; File No. SR–NASDAQ–2021–073]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date of its Post-Trade Risk Management Tool

September 24, 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 September 14, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the implementation date of its Post-Trade Risk Management product to Q1 2022.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is filing this proposal to extend the implementation date of its Post-Trade Risk Management tool to Q1 2022.

Nasdaq proposed to enhance its connectivity, surveillance and risk management services by launching three re-platformed products: (i) WorkX, (ii) Real-Time Stats and (iii) Post-Trade Risk Management. These changes were filed by Nasdaq on April 20, 2021 and published in the **Federal Register** on May 7, 2021.[3]

Nasdaq initially proposed that WorkX and Real-Time Stats would launch on April 12, 2021 and Post-Trade Risk Management would launch no later than Q3 2021.[4] Due to re-prioritization in the Nasdaq product pipeline, Nasdaq has decided to delay the implementation of Post-Trade Risk Management until Q1 2022.[5] The Exchange will announce the new implementation date in an Equity Trader Alert at least ten days in advance of implementing the Post-Trade Risk Management product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The purpose of this proposal is to modify the timing of the planned implementation for the Post-Trade Risk Management product and to inform the SEC and market participants of that change. The introduction of the Post-Trade Risk Management product was proposed in a rule filing that was submitted to the SEC, and the Exchange is not proposing with this filing, any changes other than to modify the implementation date for the Post-Trade Risk Management product. Nasdaq is delaying the implementation date in order to complete product development and testing in line with Nasdaq's re-prioritized product pipeline.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the purpose of this proposal is to modify the timing of the planned implementation for the Post-Trade Risk Management product and to inform the SEC and market participants of that change. The existing Nasdaq Risk Management product will continue to be available, and the implementation delay will impact all market participants equally. The Exchange does not expect the date change to place any burden on competition and clearing brokers will continue to have use of Nasdaq Risk Management service to monitor correspondent activity against limit settings and manage credit risk exposure.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to immediately delay the implementation date of the Nasdaq Post-Trade Risk Management product to Q1 2022, so that the Exchange may complete product development and testing in line with re-prioritization of its product pipeline. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[3] *See* Securities Exchange Act Release No. 91744 (May 3, 2021), 86 FR 24685 (May 7, 2021) (NASDAQ–2021–025) (''Proposal'').

[4] *See* Proposal *supra* n. 3 at 24685.

[5] As a result of the delay, the Exchange is designating Equity 7, Section 116–A, the Post-Trade Risk Management Rule, to be operative in Q1 2022.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–073. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–073 and should be submitted on or before October 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21212 Filed 9–29–21; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93120; File No. SR–NYSEArca–2021–64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change To Amend Rule 8.601–E (Active Proxy Portfolio Shares) To Provide for the Use of Custom Baskets

September 24, 2021.

I. Introduction

On July 28, 2021, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares) to provide for the use of custom baskets consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 (''1940 Act'')[3] applicable to a series of Active Proxy Portfolio Shares. The proposed rule change was published for comment in the **Federal Register** on August 12, 2021.[4] The Commission has received no comments on the proposed rule change. The Commission is approving the proposed rule change.

II. Description

The Exchange proposes to amend NYSE Arca Rule 8.601–E, which permits the listing and trading of series of Active Proxy Portfolio Shares. NYSE Arca 8.601–E currently requires that Active Proxy Portfolio Shares be issued and redeemed in a specified minimum number of shares, or multiples thereof, in return for the Proxy Portfolio[5] and/or cash.[6] The Exchange proposes to amend the definition of ''Active Proxy Portfolio Share'' in Rule 8.601–E(c)(1) to permit creations and redemptions of shares in return for a Custom Basket in addition to the Proxy Portfolio, to the extent permitted by a fund's exemptive relief.[7] Further, the Exchange proposes to define the term ''Custom Basket'' as a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the 1940 Act applicable to a series of Active Proxy Portfolio Shares.[8] The Exchange also proposes to amend the definition of ''Reporting Authority'' in NYSE Arca Rule 8.601–E(c)(4) to include Custom Baskets among the types of information for which the Reporting Authority designated for a particular series of Active Proxy Portfolio Shares will be the official source for calculating and reporting such information.[9]

The Exchange proposes to amend NYSE Arca Rule 8.601–E(d) to incorporate specific initial and continued listing criteria relating to Custom Baskets. Specifically, the Exchange proposes to add a new initial listing requirement to stipulate that the Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the issuer and any person acting on behalf of the series of Active Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Exchange Act

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 80a.

[4] *See* Securities Exchange Act Release No. 92595 (August 6, 2021), 86 FR 44449.

[5] The term ''Proxy Portfolio'' means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the 1940 Act applicable to such series. *See* NYSE Arca Rule 8.601–E(c)(3). The term ''Actual Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of net asset value (''NAV'') at the end of the business day. *See* NYSE Arca Rule 8.601–E(c)(2).

[6] *See* NYSE Arca Rule 8.601–E(c)(1) (defining the term ''Active Proxy Portfolio Share'').

[7] *See* proposed NYSE Arca Rule 8.601–E(c)(1) (defining ''Active Proxy Portfolio Share'' as a security that (a) is issued by an investment company registered under the 1940 Act (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next determined NAV; (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio or Custom Basket, as applicable, and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter).

[8] *See* proposed NYSE Arca Rule 8.601–E(c)(4). The Exchange proposes to renumber the remainder of NYSE Arca Rule 8.601–E(c). *See* proposed NYSE Arca Rule 8.601–E(c)(5) and (6).

[9] *See* proposed NYSE Arca Rule 8.601–E(c)(5) (defining ''Reporting Authority'' in respect of a particular series of Active Proxy Portfolio Shares as the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Active Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, NAV, the Actual Portfolio, Proxy Portfolio, Custom Basket, or other information relating to the issuance, redemption or trading of Active Proxy Portfolio Shares).

(''Regulation FD''),[10] including with respect to any Custom Basket.[11] The Exchange also proposes to add a new continued listing requirement that, with respect to each Custom Basket utilized by a series of Active Proxy Portfolio Shares, each business day, before the opening of trading in the Core Trading Session,[12] the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.[13]

Finally, the Exchange proposes to amend Commentaries .04 and .05 of NYSE Arca Rule 8.601–E, which contain requirements that specified parties must erect and maintain ''fire walls'' with respect to access to information concerning the Actual Portfolio and Proxy Portfolio and enact procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and Proxy Portfolio. The Exchange proposes to amend these rules so that the requirements set forth therein would also cover information concerning Custom Baskets. As proposed to be amended, Commentary .04 would require that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable. In addition, any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or has access to non-public information regarding the Investment Company's Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto. As proposed to be amended, Commentary .05 would require that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio, the Proxy Portfolio, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Actual Portfolio, the Proxy Portfolio, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Exchange Act and rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[15] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission previously approved NYSE Arca Rule 8.601–E to permit the listing and trading of Active Proxy Portfolio Shares.[16] As discussed above, under the current rule, a series of Active Proxy Portfolio Shares must create or redeem shares in return for the Proxy Portfolio and/or cash. The Exchange is now proposing to amend NYSE Arca Rule 8.601–E to allow a series of Active Proxy Portfolio Shares to create or redeem shares in return for a Custom Basket, which is a portfolio of securities that is different from the Proxy Portfolio, to the extent consistent with an issuer's exemptive relief under the 1940 Act.[17] For the reasons discussed below, the Commission finds that the proposed amendments to NYSE Arca Rule 8.601–E to provide for the use of Custom Baskets for Active Proxy Portfolio Shares, to the extent permitted by an issuer's exemptive relief under the 1940 Act, are consistent with Section 6(b)(5) of the Exchange Act.

The Commission believes that the proposed changes to NYSE Arca Rule 8.601–E, Commentaries .04 and .05, are consistent with the Exchange Act and are reasonably designed to help prevent fraudulent and manipulative acts and practices. The Commission notes that, because Active Proxy Portfolio Shares do not publicly disclose on a daily basis information about the holdings of the Actual Portfolio, it is vital that key information relating to Active Proxy Portfolio Shares, including information relating to Custom Baskets, be kept confidential prior to its public disclosure and not be subject to misuse.[18] Accordingly, the Commission believes that the Exchange's proposal to amend NYSE Arca Rule 8.601–E, Commentaries .04 and .05,[19] to apply the current ''fire wall'' and other requirements contained therein to those that have access to information concerning, or make decisions pertaining to, the composition of and/or changes to the Custom Baskets, in

[10] 17 CFR 243.100.

[11] *See* proposed NYSE Arca Rule 8.601–E(d)(1)(B)(iii). NYSE Arca Rule 8.601–E(d)(1)(B) currently provides that the Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series shall be calculated daily and that the NAV, the Proxy Portfolio, and the Actual Portfolio shall be made publicly available to all market participants at the same time. The Exchange proposes to renumber the current requirements as NYSE Arca Rule 8.601–E(d)(1)(B)(i) and (ii).

[12] The ''Core Trading Session'' begins for each security at 9:30 a.m. Eastern Time and ends at the conclusion of core trading hours or the core closing auction, whichever comes later. *See* NYSE Arca Rule 7.34–E(a)(2).

[13] *See* proposed NYSE Arca Rule 8.601–E(d)(2)(B)(ii). The Exchange also proposes to amend the title of NYSE Arca Rule 8.601–E(d)(2)(B) to ''Proxy Portfolio and Custom Basket.'' *See* proposed NYSE Arca Rule 8.601–E(d)(2)(B).

[14] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95) (approving proposal to adopt Rule 8.601–E to permit the listing and trading of Active Proxy Portfolio Shares and to list and trade shares of the Natixis U.S. Equities Opportunities ETF) (''2020 Order''). The Exchange must file a separate proposed rule change pursuant to Section 19(b) of the Exchange Act for each series of Active Proxy Portfolio Shares. *See* NYSE Arca Rule 8.601–E, Commentary .01.

[17] The Commission has granted exemptive relief under the 1940 Act to certain series of Active Proxy Portfolio Shares to permit the creation or redemption of shares using a Custom Basket that includes instruments that are not included, or included with different weightings, in the fund's Proxy Portfolio. *See, e.g.,* Natixis Advisors, L.P., et al., Investment Company Act Release No. 34192 (February 9, 2021).

[18] *See* 2020 Order, *supra* note 16, 85 FR at 40339.

[19] *See supra* Section II, describing proposed NYSE Arca Rule 8.601, Commentaries .04 and .05.

addition to the existing requirements relating to the Actual Portfolio and the Proxy Portfolio, is designed to prevent fraud and manipulation with respect to Active Proxy Portfolio Shares.

The Commission also believes that the proposed amendments to the initial and continued listing requirements for Active Proxy Portfolio Shares are adequate to ensure transparency of information relating to Custom Baskets utilized by a fund and to ensure that such information is available to the rest of the market participants at the same time. Specifically, prior to the opening of trading on each business day, the Investment Company will make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.[20] In addition, prior to the initial listing of the Active Proxy Portfolio Shares, the Exchange will be required to obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the issuer and any person acting on behalf of the series of Active Proxy Portfolio Shares will comply with Regulation FD, including with respect to any Custom Basket.[21] These measures help to mitigate concerns that certain information regarding the funds will be available only to select market participants and thereby helps to prevent fraud and manipulation.

The Commission notes that, as set forth in the definition of ''Custom Basket,'' a series of Active Proxy Portfolio Shares may only utilize Custom Baskets to the extent consistent with the exemptive relief issued pursuant to the 1940 Act applicable to such series.[22] The Commission further notes that all series of Active Proxy Portfolio Shares will continue to be subject to the existing rules and procedures that govern the listing and trading of Active Proxy Portfolio Shares and the trading of equity securities on the Exchange.

[20] *See* proposed NYSE Arca Rule 8.601–E(d)(2)(B)(ii).

[21] *See* proposed NYSE Arca Rule 8.601–E(d)(1)(B)(iii). The Commission notes that a fund's use of, or conversations with authorized participants about, Creation Baskets that would result in selective disclosure of non-public information would effectively be limited by the funds' obligation to comply with Regulation Fair Disclosure. *See, e.g.,* Natixis ETF Trust II, et al., Investment Company Act Release No. 34171 (January 12, 2021).

[22] *See* proposed NYSE Arca Rule 8.601–E(c)(4).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act [23] that the proposed rule change (SR–NYSEArca–2021–64), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21209 Filed 9–29–21; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93121; File No. SR–BX–2021–040]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Options 7, Section 2, BX Options Market-Fees and Rebates

September 24, 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 September 10, 2021, Nasdaq BX, Inc. (''BX'' or ''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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Options 7, Section 2, ''BX Options Market-Fees and Rebates.''

The Exchange originally filed the proposed pricing changes on August 27, 2021 (SR–BX–2021–036). On September 10, 2021, the Exchange withdrew that filing and submitted this filing.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 BX's Pricing Schedule at Options 7, Section 2, ''BX Options Market-Fees and Rebates.'' Specifically, within Options 7, Section 2(1), the Exchange proposes to: (1) Increase the Non-Penny Symbol Customer Taker Fee; and (2) amend note 3 of that section that reduces the Non-Penny Symbol Customer Maker Rebate in certain circumstances.

Today, Customers are assessed a Non-Penny Symbol Taker Fee of $0.65 per contract for removing liquidity and paid a Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity. Today, with respect to the Customer Non-Penny Symbol Maker Rebate, Customer orders receive a $0.45 per contract Non-Penny Symbol Maker Rebate, instead of the aforementioned $0.90 per contract rebate, if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month.[4]

The Exchange proposes to increase the Customer Non-Penny Symbol Taker Fee from $0.65 to $0.79 per contract. The Exchange also proposes to amend the percentage within note 3, related to the quantity of transactions where the contra-side is also a Customer, from 25% to 50%. Proposed note 3 would provide, ''Customer orders will receive a $0.45 per contract Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 50% of

[4] *See* Options 7, Section 2(1) note 3. The 25% calculation does not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13.

Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month. The aforementioned calculation of 50% will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13.''

The Exchange would continue to pay a Customer Non-Penny Symbol Maker Rebate of $0.90 per contract. Also, the Exchange would continue to pay the lower Non-Penny Symbol Maker Rebate of $0.45 per contract if the quantity of transactions where the contra-side is also a Customer is greater than the proposed 50% of Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [7]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange's proposal to increase the Customer Non-Penny Symbol Taker Fee from $0.65 to $0.79 per contract is reasonable. While the Exchange's Customer Non-Penny Symbol Taker Fee is increasing, the Exchange believes its fees remain competitive with other options exchanges.[9] Also, BX continues to offer the highest base rebate of $0.90 per contract prior to taking into account volume or contra-party.[10] Of note, other exchanges have higher simple order rebates, provided certain volume criteria are met.[11] Accordingly, the Exchange believes that the proposed Customer Non-Penny Symbol Taker Fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.

The Exchange's proposal to increase the Customer Non-Penny Symbol Taker Fee from $0.65 to $0.79 per contract is equitable and not unfairly discriminatory because the proposed pricing will apply uniformly to all similarly situated Participants for Non-Penny Symbols. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend the percentage within note 3 related to the volume consideration for the ratio of Customer to Customer orders as compared to total Participant volume which adds Non-Penny Symbol liquidity in order to receive the $0.90 per contract Customer Non-Penny Symbol rebate as compared to the reduced $0.45 per contract rebate is

[5] 15 U.S.C. 78 f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[9] NYSE Arca, Inc. (''NYSEArca Options Fees'') currently assesses customers a Take Liquidity fee of $0.85 per contract in Non-Penny Issues (or $0.67 per contract if the Customer is trading against a lead market maker). *See* NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions—Per Contract.

[10] The examples which follow represent options fees. BOX Exchange LLC (''BOX'') pays no Non-Penny Interval Class Public customer Maker Rebate. *See* BOX's Fee Schedule at Section I, A. Cboe Exchange, Inc. (''Cboe'') pays a Non-Penny Class rebate to customers of $0.18 per contract only if the original order is greater than or equal to 100 contracts and removes liquidity. *See* Cboe's Fee Schedule. Cboe C2 Exchange, Inc. (''C2'') pays a Non-Penny Class rebate to customers of $0.80 per contract to transactions which add liquidity. *See* C2's Fee Schedule. Cboe BZX Exchange, Inc. (''CboeBZX'') pays Non-Penny Program Securities rebates to customers which range from $0.85 to $1.06 per contract to transactions which add liquidity. *See* CboeBZX's Fee Schedule. Cboe EDGX Exchange, Inc. (''CboeEDGX'') pays Non-Penny Program Securities rebates to customers which range from $0.01 to $0.21 based on customer volume tiers. *See* CboeEDGX's Fee Schedule. Miami International Securities Exchange, LLC (''MIAX'') pays no customer rebate for non-penny classes. *See* MIAX's Fee Schedule. MIAX PEARL, LLC (''PEARL'') pays Priority Customer Non-Penny Classes Maker Rebates which range from $0.85 to $1.04 based on volume. *See* PEARL's Fee Schedule. MIAX Emerald, LLC (''EMERALD'') pays Priority Customer Maker Rebates which range from $0.43 to $0.53, except that SPY, QQQ and IWM rebates are $0.45 and Priority Customer Simple Order rebates when contra is an Affiliated Market Maker are $0.49. *See* EMERALD's Fee Schedule. NYSEArca pays a Customer a $0.75 rebate to post liquidity unless contra a lead market maker, in which case no rebate is paid. *See* NYSE Arca Options Fees and Charges. NYSE American LLC (''NYSEAmerican'') pays no Customer rebates. *See* NYSE American Options Fee Schedule. The Nasdaq Stock Market LLC (''NOM'') pays an $0.80 per contract Customer Non-Penny Symbol Rebate and in some cases $1.00, or $1.05 if other criteria are met. *See* NOM's Pricing Schedule. Nasdaq Phlx LLC (''Phlx'') pays Customer Non-Penny rebates which range from $0.00 to $0.27. *See* Phlx's Pricing Schedule. Nasdaq ISE, LLC ('ISE'') pays no Non-Penny Priority Customer rebates. *See* ISE's Pricing Schedule. Nasdaq GEMX, LLC (''GEMX'') pays Priority Customer Non-Penny Symbol Maker Rebates which range from $0.75 to $1.05. *See* GEMX's Pricing Schedule. Nasdaq MRX, LLC ('MRX'') pays no Priority Customer Non-Penny Symbol rebates. *See* MRX's Pricing Schedule.

[11] *Id.*

reasonable. With this proposal, the Exchange would assess a $0.79 per contract Customer Non-Penny Taker Fee, the lowest BX Taker Fee for Non-Penny Symbols,[12] and, currently, the Exchange pays the highest Customer Maker Rebate of $0.90 per contract that does not consider volume or contra-party. The Exchange continues to offer Customers the highest Non-Penny Maker Rebate on BX by assessing higher Non-Penny Taker Fees to Non-Customers.[13] To the extent a Participant submits a Non-Penny Customer order to add liquidity which interacts with a Non-Penny Customer order that removes liquidity, both Participants benefit from the higher Non-Penny Maker Rebate and lower Non-Penny Taker Fee. The Exchange's intention for assessing Customer orders with the reduced Non-Penny Taker Fee was designed to bolster interaction with Non-Customer participants. Today, Non-Penny Customer orders which add liquidity have priority [14] ahead of Non-Penny Non-Customer orders and, therefore, the Exchange's intention to enhance Non-Customer liquidity is subverted when a Non-Penny Customer order transacts with another Non-Penny Customer order. As a result, when Non-Penny Customers interact with other Non-Penny Customer orders more than by happenstance, the Exchange believes it is reasonable to pay Customer orders which add liquidity a lower rebate. The Exchange notes that Participants do occasionally submit Non-Penny Customer orders which add liquidity in Non-Penny Symbols to the order book that trade against Non-Penny Customer orders that remove liquidity in Non-Penny Symbols. The Exchange believes that type of behavior occurs, by happenstance, a small percentage of the time in a month. The Exchange initially determined that 25% was the proper percentage which represented the quantity of transactions that would demarcate the point at which a Participant should receive the lower Customer Non-Penny Symbol Maker Rebate of $0.45 per contract because it does not believe that the type of behavior outlined herein should occur more than a certain percentage of the time (in this case 25% of a Participant's total Customer Non-Penny Symbol volume) unless the trading behavior was intended. After reviewing the trading behavior for a period of time since the adoption of the 25% threshold, the Exchange believes that a percentage of 50% would be a more accurate demarcation. The Exchange has monitored Customer to Customer trading behavior transacted on BX since the inception of the 25% threshold. The Exchange believes that the addition of the threshold deterred certain intended Customer to Customer transactions, and the Exchange observed an expansion of counter parties on Customer to Customer trades after the threshold was introduced. The Exchange believes that increasing the percentage to 50% will more reasonably account for inadvertent Customer to Customer trades while still deterring those Customer to Customer transactions which occur more than by happenstance given the number of Non-Penny Symbol Customer to Customer orders transacted on BX.

While this proposal would continue to provide Customer orders with lower rebates if they transact the requisite number of Customer-to Customer trades, the Exchange continues to believe that the $0.45 per contract rebate remains competitive and equal to or greater than the rebates that other Participants are afforded.[15]

The Exchange's proposal to amend the percentage within note 3 related to the volume consideration for the ratio of Customer to Customer orders as compared to total Participant volume which adds Non-Penny Symbol liquidity in order to receive the $0.90 per contract Customer Non-Penny Symbol rebate as compared to the reduced $0.45 per contract rebate is equitable and not unfairly discriminatory. The Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The Exchange's proposal to increase the Customer Non-Penny Symbol Taker Fee from $0.65 to $0.79 per contract does not impose an undue burden on competition because the proposed pricing will apply uniformly to all similarly situated Participants for Non-Penny Symbols. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 50% of Participant's total Customer Non-Penny Symbol volume which adds liquidity [16] in that month does not impose an undue burden on competition as the Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate.

[12] Non-Customer orders are assessed a $1.10 Non-Penny Symbol Taker Fee.

[13] A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker. *See* BX Options 7, Section 1.

[14] *See* Options 3, Section 10.

[15] Today, Lead Market Makers are paid $0.45 per contract Non-Penny Symbol Maker Rebates and Market Maker are paid $0.40 per contract Non-Penny Symbol Maker Rebates. Firms and Non-Customers are not eligible for Non-Penny Symbol Maker Rebates and instead are charged a Maker Fee of $0.45 per contract.

[16] As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2021–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2021–040. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2021–040, and should be submitted on or before October 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21210 Filed 9–29–21; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93119; File No. SR–NASDAQ–2021–045]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing Primary Offering

September 24, 2021.

I. Introduction

On June 11, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to 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 the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 30, 2021.[3] On August 12, 2021, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

Nasdaq Listing Rule IM–5315–2 provides listing requirements for Nasdaq's Global Select Market for a company that has not previously had its common equity securities registered under the Exchange Act to list its common equity securities on the Exchange at the time of effectiveness of a registration statement[7] pursuant to which the company will sell shares itself in the opening auction on the first day of trading on the Exchange (a ''Direct Listing with a Capital Raise'').[8] Securities qualified for listing under Nasdaq Listing Rule IM–5315–2 must begin trading on the Exchange following the initial pricing through the mechanism outlined in Nasdaq Rule 4120(c)(9) and Nasdaq Rule 4753 for the opening auction, otherwise known as the Nasdaq Halt Cross.[9] Currently, in

[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) (''Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2021-045/srnasdaq2021045.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92649 (August 12, 2021), 86 FR 46295 (August 18, 2021). The Commission designated September 28, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The reference to a registration statement refers to a registration statement effective under the Securities Act of 1933 (''Securities Act'').

[8] A Direct Listing with a Capital Raise includes listings where either: (i) Only the company itself is selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction. *See* Nasdaq Listing Rule IM–5315–2. *See also* Securities Exchange Act Release No. 91947 (May 19, 2021), 86 FR 28169 (May 25, 2021) (order approving rules to permit a Direct Listing with a Capital Raise and adopting related rules concerning how the opening transaction for such listing will be effected) (''2021 Order''). The Exchange's rules provide for a company listing pursuant to a Direct Listing with a Capital Raise to list only on the Nasdaq Global Select Market.

[9] *See* Nasdaq Listing Rule IM–5315–2. ''Nasdaq Halt Cross'' means the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. *See* Nasdaq Rule 4753(a)(4). ''Eligible Interest'' means any quotation or any order that has been entered into the system

the case of a Direct Listing with a Capital Raise, the Exchange will release the security for trading on the first day of listing if, among other things, the actual price calculated by the Nasdaq Halt Cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement [10] (the ''Pricing Range Limitation''). The Exchange has proposed to modify the Pricing Range Limitation to provide that the Exchange would release the security for trading if (a) the actual price calculated by the Nasdaq Halt Cross is at or above the price that is 20% below the lowest price, and at or below the price that is 20% above the highest price, of the disclosed price range; or (b) the actual price calculated by the Nasdaq Halt Cross is at a price above the price that is 20% above the highest price of such price range, provided that the company has certified to the Exchange that such price would not materially change the company's previous disclosure in its effective registration statement.[11] The Exchange would use the high end of the price range in the prospectus at the time of effectiveness to measure the permitted 20% deviation from both the high end (in the case of an increase in the price) and low end (in the case of a decrease in the price) of the disclosed price range.[12] The Exchange has also proposed to make related conforming changes.

Currently Nasdaq Rule 4120(c)(9)(B) states that, notwithstanding the provisions of Nasdaq Rule 4120(c)(8)(A) and (c)(9)(A), in the case of a Direct Listing with a Capital Raise, for purposes of releasing securities for trading on the first day of listing, the Exchange, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade. The Exchange will release the security for trading if: (i) All market orders will be executed in the Nasdaq Halt Cross; and (ii) the actual price calculated by the Nasdaq Halt Cross complies with the Pricing Range Limitation. The Exchange will postpone and reschedule the offering only if either or both of such conditions are not met.[13] The Exchange states that if there is insufficient buy interest to satisfy the CDL Order [14] and all other market orders, as required by the rule, or if the actual price calculated by the Nasdaq Halt Cross is outside the disclosed price range, the Nasdaq Halt Cross would not proceed and such security would not begin trading.[15]

According to the Exchange, based on conversations it has had with companies and their advisors, the Exchange believes that some companies may be reluctant to use the existing rules for a Direct Listing with a Capital Raise because of concerns about the Pricing Range Limitation.[16] The Exchange states that the Pricing Range Limitation imposed on a Direct Listing with a Capital Raise (but not on a traditional IPO) increases the probability of a failed offering, because the offering cannot proceed without some delay not only due to lack of investor interest, but also if investor interest is greater than the company and its advisors anticipated.[17] According to the Exchange, the Exchange believes that there may be instances of offerings where the price determined by the Exchange's opening auction will exceed the highest price of the price range disclosed in the company's effective registration statement.[18] The Exchange states that, under the existing rule, a security subject to a Direct Listing with a Capital Raise cannot be released for trading by the Exchange if the actual price calculated by the Nasdaq Halt Cross is above the highest price of the disclosed price range.[19] The Exchange further states that, in this case, the Exchange would have to cancel or postpone the offering until the company amends its effective registration statement, and that, at a minimum, such a delay exposes the company to market risk of changing investor sentiment in the event of an adverse market event.[20] In addition, the Exchange states that the determination of the public offering price of a traditional IPO is not subject to limitations similar to the Pricing Range Limitation for a Direct Listing with a Capital Raise, which, in the Exchange's view, could make companies reluctant to use this alternative method of going public despite its expected potential benefits.[21]

The Exchange has proposed to modify the Pricing Range Limitation such that even if the actual price calculated by the Nasdaq Halt Cross is outside the disclosed price range, the Exchange would release a security for trading if the actual price at which the Nasdaq Halt Cross would occur is at or above the price that is 20% below the lowest price of the disclosed price range and at or below the price that is 20% above the highest price of the disclosed price range, provided all other necessary conditions are satisfied, and that the company has specified the quantity of shares registered, as permitted by Securities Act Rule 457.[22] In addition, under the proposal, the Exchange would release the security for trading, provided all other necessary conditions are satisfied, at a price more than 20% above the highest price of the disclosed price range, if the company has certified to the Exchange that such offering price would not materially change the company's previous disclosure in its effective registration statement.[23]

The Exchange states that it believes that its proposed approach is consistent with Securities Act Rule 430A and staff guidance, which, according to the Exchange, generally allow a company to price a public offering 20% outside of the disclosed price range without regard to the materiality of the changes to the

and designated with a time-in-force that would allow the order to be in force at the time of the Nasdaq Halt Cross. *See* Nasdaq Rule 4753(a)(5). Pursuant to Nasdaq Rule 4120, the Exchange will halt trading in a security that is the subject of an initial public offering (or direct listing), and terminate that halt when the Exchange releases the security for trading upon certain conditions being met, as discussed further below. *See* Nasdaq Rule 4120(a)(7) and (c)(8).

[10] The Exchange states that references in the proposal to the price range established by the issuer in its effective registration statement refer to the price range disclosed in the prospectus in such effective registration statement. *See* Notice, *supra* note 3, 86 FR at 34816 n.5. Throughout this order, we refer to this as the ''disclosed price range.''

[11] *See* proposed Nasdaq Rule 4120(c)(9)(C).

[12] *See id.*

[13] *See* Nasdaq Rule 4120(c)(9)(B).

[14] A ''Company Direct Listing Order'' or ''CDL Order'' is a market order that may be entered only on behalf of the issuer and may be executed only in the Nasdaq Halt Cross for a Direct Listing with a Capital Raise. The CDL Order is entered without a price (with a price later set in accordance with the requirements of Nasdaq Rule 4120(c)(9)(B)), must be for the quantity of shares offered by the issuer as disclosed in its effective registration statement, must be executed in full in the Nasdaq Halt Cross, and may not be canceled or modified. *See* Nasdaq Rule 4702(b)(16).

[15] *See* Notice, *supra* note 3, 86 FR at 34816. The Exchange represents that in such event, because the Nasdaq Halt Cross cannot be conducted, the Exchange would postpone and reschedule the offering and notify participants via a Trader Update that the Direct Listing with a Capital Raise scheduled for that date has been cancelled and any orders for that security that have been entered on the Exchange would be cancelled back to the entering firms. *See id.*

[16] *See id.* The Exchange states that a Direct Listing with a Capital Raise could maximize the chances of more efficient price discovery of the initial public sale of securities for issuers and investors, because, unlike in a traditional firm commitment underwritten public offering (''IPO'') the initial sale price is determined based on market interest and the matching of buy and sell orders in an auction open to all market participants. *See id.*

[17] *See id.* The Exchange states that if an offering cannot be completed due to lack of investor interest, there is likely to be substantial amount of negative publicity for the company and the offering may be delayed or cancelled. *See id.*

[18] *See id.*

[19] *See id.* at 34816–17.

[20] *See id.* at 34817.

[21] *See id.*

[22] *See id. See also infra* notes 24 and 26 and accompanying text.

[23] *See* Notice, *supra* note 3, 86 FR at 34817.

disclosure contained in the company's registration statement.[24] According to the Exchange, the Exchange believes such guidance also allows deviation above the price range beyond the 20% threshold if such change or deviation does not materially change the previous disclosure.[25] The Exchange states that, accordingly, the Exchange believes that a company listing in connection with a Direct Listing with a Capital Raise can specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, when an auction prices outside of the disclosed price range, use a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) there is a deviation above the price range beyond the 20% threshold noted in Rule 430A if such deviation would not materially change the previous disclosure, in each case assuming the number of shares issued is not increased from the number of shares disclosed in the prospectus.[26] The Exchange proposes that the 20% threshold would be calculated using the high end of the disclosed price range and would be measured from either the high end (in the case of an increase in the price) or low end (in the case of a decrease in the price) of that range, and states that this method of calculation is consistent with the SEC Staff's guidance on Securities Act Rule 430A.[27]

The Exchange represents that in each instance of a Direct Listing with a Capital Raise, the Exchange would issue an industry wide trader alert[28] to inform market participants that the auction could price up to 20% below the lowest price of the price range and would specify that price. The Exchange also represents that it would indicate in such trader alert whether or not there is an upside limit above which the Nasdaq Halt Cross could not proceed, based on the company's certification.[29] According to the Exchange, if there is no upside limit, the Exchange would caution market participants about the use of market orders and explain that, unlike a limit order, a market order can be executed at any price determined by the Nasdaq Halt Cross.[30]

Nasdaq Listing Rule IM–5315–2 provides that in determining whether a company listing in connection with a Direct Listing with a Capital Raise satisfies the Market Value of Unrestricted Publicly Held Shares[31] for initial listing on the Nasdaq Global Select Market, the Exchange will deem such company to have met the applicable requirement[32] if the amount of the company's Unrestricted Publicly Held Shares before the offering, along with the market value of the shares to be sold by the company in the Exchange's opening auction in the Direct Listing with a Capital Raise, is at least $110 million (or $100 million, if the company has stockholders' equity of at least $110 million). For this purpose, under current rules, the Market Value of Unrestricted Publicly Held Shares will be calculated using a price per share equal to the lowest price of the disclosed price range.[33] The Exchange states that because the Exchange proposes to allow the opening auction to price up to 20% below the lowest price of the disclosed price range, the Exchange proposes to make a conforming change to Nasdaq Listing Rule IM–5315–2 to provide that the price used to determine such company's compliance with the required Market Value of Unrestricted Publicly Held Shares would be the price per share equal to the price that is 20% below the lowest price of the disclosed price range.[34] The Exchange further states that this is the minimum price at which the company could qualify to be listed.[35]

The Exchange states that any company listing in connection with a Direct Listing with a Capital Raise would continue to be subject to, and required to meet, all other applicable initial listing requirements, including the requirements to have the applicable number of shareholders and at least 1,250,000 Unrestricted Publicly Held Shares outstanding at the time of initial listing, and the requirement to have a price per share of at least $4.00 at the time of initial listing.[36]

Finally, the Exchange has proposed to amend Nasdaq Rules 4753(a)(3)(A) and 4753(b)(2) to conform the requirements for disseminating information and establishing the opening price through the Nasdaq Halt Cross in a Direct Listing with a Capital Raise to the proposed amendment to allow the opening auction to price as much as 20% below the lowest price of the disclosed price range.[37] Specifically, the Exchange proposes changes to Nasdaq Rules 4753(a)(3)(A) and 4753(b)(2) to make adjustments to the calculation of the Current Reference Price, which is disseminated in the Nasdaq Order Imbalance Indicator,[38] and to the calculation of the price at which the Nasdaq Halt Cross will execute, for a Direct Listing with a Capital Raise. Under these rules currently, where there are multiple prices that would satisfy the conditions for determining the price, the fourth tie-breaker for a Direct Listing with a Capital Raise is the price that is closest to the lowest price of the disclosed price range. The Exchange states that, to conform these rules to the proposed modification of the price range within which the opening auction would proceed, the Exchange proposes to modify the fourth tie-breaker for a Direct Listing with a Capital Raise to use the price closest to the price that is 20% below the lowest price of the disclosed price range.[39]

[24] *See id.* The Exchange states that Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount, and that the Exchange expects that companies selling shares through a Direct Listing with a Capital Raise will register securities by specifying the quantity of shares registered and not a maximum offering amount. *See id.* at 34817 n.9. The Exchange also states that the Exchange believes that the proposed modification of the Pricing Range Limitation is consistent with the protection of investors, because, according to the Exchange, this approach is not substantively different from the pricing of an IPO where an issuer is permitted to price outside of the disclosed price range in accordance with the SEC Staff's guidance. *See id.* at 34818.

[25] *See id.* at 34817.

[26] *See id.*

[27] *See* proposed Nasdaq Rule 4120(c)(9)(C); Notice, *supra* note 3, 86 FR at 34817.

[28] The Exchange states that a trader alert is an industry-wide, subscription-based free service provided by the Exchange. *See* Notice, *supra* note 3, 86 FR at 34817 n.10.

[29] *See id.* at 34817.

[30] *See id.* The Exchange stated it believes that investors have become familiar with the approach of the pricing for a company conducting an IPO being outside of the price range stated in an effective registration statement. *See id.* at 34818.

[31] *See* Nasdaq Listing Rule 5005(a)(23) and (45) for the definitions of ''Market Value'' and ''Unrestricted Publicly Held Shares,'' respectively.

[32] *See* Nasdaq Listing Rule 5315(f)(2).

[33] *See* Nasdaq Listing Rule IM–5315–2. The Exchange will determine that the company has met the applicable bid price and market capitalization requirements based on the same per share price. *See id.*

[34] *See* Notice, *supra* note 3, 86 FR at 34817.

[35] *See id.*

[36] *See id.* at 34818 (citing Nasdaq Listing Rules 5315(e)(1) and (2) and 5315(f)(1)).

[37] *See* proposed Nasdaq Rules 4753(a)(3)(A)(iv)c. and 4753(b)(2)(D)(iii).

[38] *See* Nasdaq Rule 4753(a)(3) for a description of the ''Current Reference Price'' and the ''Order Imbalance Indicator.''

[39] *See* Notice, *supra* note 3, 86 FR at 34818. One commenter stated its general support for the proposal, including the proposed modifications to the pricing limitations in the opening auction of a Direct Listing with a Capital Raise. *See* Letter from Evan Damast, Global Head of Equity and Fixed Income Syndicate, Morgan Stanley (July 21, 2021). Another commenter stated in support of the proposal that it continues to support innovation in the capital markets that allow more transparency, fairness, and confidence of capital flows between investors and issuers, and that the proposed price

III. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2021–045 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposal should be approved or disapproved.[40] Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Exchange Act and, in particular, with Section 6(b)(5)[41] of the Exchange 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[42]

The Commission has consistently recognized the importance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[43]

The Exchange is proposing to modify the rules concerning the opening transaction on the first day of trading for a Direct Listing with a Capital Raise so that the opening transaction is not constrained by the Pricing Range Limitation, which limits the price of the opening transaction to the price range disclosed in the issuer's effective registration statement. Instead, the proposal would allow the opening transaction to proceed at a price up to 20% above or below the disclosed price range or at a price higher than 20% above the disclosed price range if the issuer certifies that the offering price would not materially change the issuer's disclosures in its effective registration statement.

The Exchange, in support of its proposal, states that the proposed modification to the pricing limitation is consistent with the protection of investors because this approach ''is not substantively different'' from the pricing flexibility provided to firm commitment underwritten IPOs.[44] The relevance of this comparison is unclear, particularly given the difference in timing of the determination of the IPO price, relative to the initiation of trading, between a firm commitment underwritten IPO and a Direct Listing with a Capital Raise. In a firm commitment underwritten IPO, the IPO price is determined prior to the time of sale to the underwriters and initial investors, which takes place in advance of the opening transaction on the Exchange. In contrast, in a Direct Listing with a Capital Raise, the IPO price is the opening price determined through the Nasdaq Halt Cross, which does not occur until after the Exchange receives bids to purchase the securities. The Exchange has not clearly addressed the differences in how information about the final offering price is communicated to investors in each type of offering or any differences in what information investors have at the time of their investment decisions about the final offering price or how much this price might deviate from the disclosed price range. Therefore, we have concerns about whether the Exchange has adequately justified why its proposal is consistent with the protection of investors under Section 6(b)(5) and other relevant provisions of the Exchange Act, given the differing circumstances of a Direct Listing with a Capital Raise, as compared to a firm commitment underwritten IPO.

Further, in the context of a firm commitment underwritten IPO, if a determination is made following effectiveness of the related registration statement to price the offering outside of the disclosed price range, the issuer and underwriters have the ability, prior to the completion of the offering, to provide any necessary additional disclosures that are dependent on the price of the offering. In contrast, under the proposal, the Exchange would release a security for trading in a Direct Listing with a Capital Raise if the price calculated by the Nasdaq Halt Cross is within 20% of the disclosed price range (or more than 20% above the disclosed price range if the company provides the required certification). Under the Exchange's proposal, it is unclear how companies would be able to disclose any additional material information related to the final offering price prior to the time of sale. In support of its proposal, the Exchange asserts that companies can ''generally . . . price a public offering 20% outside of the [disclosed price range] without regard to the materiality of the changes to the disclosure contained in the company's registration statement.'' [45] While Securities Act Rule 430A permits companies to omit specified price-related information from the prospectus included in the registration statement at the time of effectiveness, and later file the omitted information with the Commission as specified in the rule, it neither prohibits a company from conducting a registered offering at prices beyond those that would permit a company to provide pricing information through a Securities Act Rule 424(b) prospectus supplement nor absolves any company relying on the

flexibility would allow IPOs to be completed more seamlessly and provide both investor protections and issuer benefits. *See* Letter from Burke Dempsey, EVP Head of Investment Banking, Wedbush Securities Inc. (August 9, 2021). This commenter also stated that it believes the proposal would stimulate a vibrant ecosystem of data and analytics and fintech companies to further refine IPO pricing accuracy and broaden investor participation, thus improving capital intermediation for U.S. markets. *See id.*

[40] 15 U.S.C. 78s(b)(2)(B).

[41] 15 U.S.C. 78f(b)(5).

[42] *Id.*

[43] The Commission has stated in approving national securities exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.,* 2021 Order, *supra* note 8, 86 FR at 28172 n.47; Securities Exchange Act Release Nos. 90768 (December 22, 2020), 85 FR 85807, 85811 n.55 (December 29, 2020) (SR–NYSE–2019–67) (''NYSE 2020 Order''); 82627 (February 2, 2018), 83 FR 5650, 5653 n.53 (February 8, 2018) (SR–NYSE–2017–30) (''NYSE 2018 Order''); 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* 2021 Order, *supra* note 8, 86 FR at 28172 n.47; NYSE 2020 Order, 85 FR at 85811 n.55; NYSE 2018 Order, 83 FR at 5653 n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314 n.42 (December 9, 2019) (SR–NASDAQ–2019–059); 88716 (April 21, 2020), 85 FR 23393, 23395 n.22 (April 27, 2020) (SR–NASDAQ–2020–001).

[44] *See* Notice, *supra* note 3, 86 FR at 34818.

[45] *See id.* at 34817.

rule from any liability for potentially misleading disclosure under the federal securities laws.[46] The Exchange has not explained how an issuer would be able, under the proposed rule, to provide any disclosure necessary to avoid any material misstatements or omissions, including what methods an issuer may use to provide such disclosures to potential purchasers.[47] In contrast, in a firm commitment underwritten IPO, the issuer has control over the timing of its initial sale, and can delay the offering, if necessary, to convey any additional material information necessary to provide accurate disclosure. The Exchange has not explained how the potential inability of an issuer to convey important material pricing information to investors in a timely manner under its proposal would be consistent with the investor protection requirements under Section 6(b)(5) of the Exchange Act.

We also have concerns that the Exchange has not explained how the proposal is consistent with or would operate in conjunction with Item 501(b)(3) of Regulation S–K, which requires non-reporting issuers to disclose a bona fide price range.[48] Under Item 501(b)(3), an issuer conducting a Direct Listing with a Capital Raise would be required to disclose a bona fide price range. We are concerned that if the actual IPO price could fall outside of the disclosed price range, potentially with no upside limit, investors may not have adequate information to inform efficient price discovery. The Exchange has not explained how this would be consistent with the investor protection requirements under Section 6(b)(5) and other relevant provisions of the Exchange Act.

In addition, the Exchange's proposal provides that the actual price at which the Nasdaq Halt Cross may proceed may be over 20% higher than the disclosed price range, if the company has certified to the Exchange that such offering price would not materially change the company's previous disclosure in its effective registration statement. The Exchange has not explained when such certification would occur and, in particular, if the certification would occur prior to the start of the process for opening the security on the first day of trading under Nasdaq Rule 4120(c)(8) or before market orders can be entered by investors.[49] If certification would occur prior to the time the expected opening price in the Nasdaq Halt Cross is calculated, it is unclear how the company would be able to certify, in advance of knowing the expected opening price, that the opening price would not materially change the company's previous disclosure. The Exchange also has not explained what information would be included in the certification, including whether the certification would contain a representation about the potential opening price on the first day of trading on the Exchange and if it would contain detail about the factors that the company relied upon to make its materiality determination. Further, in addition to the lack of clarity in the proposal on the timing of the certification and the information that will be required, the Exchange has not explained what would happen if there were material developments relating to the company between the time the issuer makes its certification and the opening of trading. Given the potential that material news arising after a certification could impact the company's disclosure, it is unclear how the process as proposed would allow the company to meet its obligations under the federal securities laws. As a result, the proposed certification process raises concerns about the proposed rule change's consistency with investor protection and the public interest, and other relevant provisions, under Section 6(b)(5) of the Exchange Act.

The Exchange proposes to use the high end of the price range disclosed in the prospectus for purposes of calculating the permissible 20% deviation from both the high and low end of the disclosed price range.[50] This proposed provision, however, is not supported by the specific provisions of Securities Act Rule 430A. Specifically, the Instruction to paragraph (a) of Securities Act Rule 430A states, in part, that ''any deviation from the low or high end of the [offering price] range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b)(1) . . . if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the 'Calculation of Registration Fee' table in the effective registration statement.'' [51] The proposal therefore raises investor protection concerns, among others, under Section 6(b)(5) of the Exchange Act.

Finally, the proposed rules would specify that the revised pricing limitation would apply ''provided that the Company specifies the quantity of shares registered, as permitted by Securities Act Rule 457.'' [52] The Exchange states that it ''expects that companies selling shares through a Direct Listing with a Capital Raise will register securities by specifying the quantity of shares registered and not a maximum offering amount.'' [53] Given this stated ''expectation'' and the lack of a specific citation to Securities Act Rule 457(a) in proposed Nasdaq Rule 4120(c)(9)(C), it is not clear whether the Exchange would require companies in all cases to register a specified amount of securities pursuant to Securities Act Rule 457(a) [54] in order for proposed Nasdaq Rule 4120(c)(9)(C) to apply. Further, it is not clear whether a company selling shares through a Direct Listing with a Capital Raise could instead choose to register securities by the proposed maximum aggregate offering amount, as permitted by Securities Act Rule 457(o), provided that the company agreed that the opening transaction on the first day of trading would proceed pursuant to Nasdaq Rule 4120(c)(9)(B) and its use of the Pricing Range Limitation. To the extent that the opening transaction on the first day of trading for a Direct Listing with a Capital Raise could

[46] See Securities Act Release No. 7168 (May 11, 1995) at n.32. (''While no post-effective amendment is required to be filed, issuers continue to be responsible for evaluating the effect of a volume change or price deviation on the accuracy and completeness of disclosure made to investors.'')

[47] For purposes of Sections 12(a)(2) and 17(a)(2) of the Securities Act, information conveyed to purchasers only after the time of sale will not be taken into account for purposes of determining whether a prospectus or oral statement, or a statement, respectively, included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading at the time of sale. *See* Securities Act Rule 159.

[48] Instruction 1(A) to Item 501(b)(3) of Regulation S–K provides that if a preliminary prospectus is circulated and the registrant is not subject to the reporting requirements of Sections 13(a) or 15(d) of the Exchange Act, the registrant must provide a ''bona fide estimate of the range of the maximum offering price and the maximum number of securities offered.'' 17 CFR 229.501(b)(3), Instruction 1(A) to paragraph 501(b)(3).

[49] Under Nasdaq Rule 4120(c)(8), market participants may enter orders in a security that is the subject of an IPO beginning at 4:00 a.m. The process for opening the IPO begins with the commencement of a 10 minute Display Only Period followed by a Pre-Launch Period of indeterminate duration. *See* Nasdaq Rule 4120(c)(8).

[50] The Exchange states that this part of its proposal, which it is requesting the Commission to approve under the Exchange Act, is consistent with SEC Staff guidance. *See* Notice, *supra* note 3, 86 FR at 34817.

[51] *See* 17 CFR 230.430A, Instruction to paragraph (a).

[52] *See* proposed Nasdaq Rule 4120(c)(9)(C).

[53] Notice, *supra* note 3, 86 FR at 34817 n.9.

[54] Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount, pursuant to Rule 457(o).

proceed under either Nasdaq Rule 4120(c)(9)(B) (utilizing the existing Pricing Range Limitation) or Nasdaq Rule 4120(c)(9)(C) (utilizing the modified pricing limitation), the Exchange has not explained how it would be consistent with the Exchange Act for the Exchange to use, in both contexts, the price that is 20% below the lowest price of the disclosed price range for purposes of Nasdaq Listing Rule IM–5315–2 and Nasdaq Rules 4753(a)(3)(A) and 4753(b)(2).[55]

The Commission notes that, 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 self-regulatory organization ['SRO'] that proposed the rule change.'' [56] 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,[57] 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 Exchange Act and the applicable rules and regulations.[58]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [59] to determine whether the proposal should be approved or disapproved.

IV. Commission's Solicitation of 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 view of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Exchange 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.[60]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 21, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 4, 2021.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–045. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–045 and should be submitted on or before October 21, 2021. Rebuttal comments should be submitted by November 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21208 Filed 9–29–21; 8:45 am]

BILLING CODE 8011–01–P

[55] The proposal would modify Nasdaq Listing Rule IM–5315–2, regarding the price used to determine a company's compliance with the initial listing requirements concerning the Market Value of Publicly Held Shares, bid price, and market capitalization, and would modify the fourth tie-breaker in Nasdaq Rule 4753(a)(3)(A), regarding the calculation of the Current Reference Price as disseminated in the Nasdaq Order Imbalance Indicator, and Nasdaq Rule 4753(b)(2), regarding the calculation of the price at which the Nasdaq Halt Cross will execute.

[56] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[57] *See id.*

[58] *See id.*

[59] 15 U.S.C. 78s(b)(2)(B).

[60] Section 19(b)(2) of the Exchange 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).

[61] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34386; 812–15183]

Optimum Fund Trust, et al.; Notice of Application

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under Section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from Section 15(c) of the Act.

APPLICANTS: Optimum Fund Trust, Delaware Group Adviser Funds, Delaware Group Cash Reserve, Delaware Group Equity Funds I, Delaware Group Equity Funds II, Delaware Group Equity Funds IV, Delaware Group Equity Funds V, Delaware Group Foundation Funds, Delaware Group Global & International Funds, Delaware Group Government Fund, Delaware Group Income Funds, Delaware Group Limited-Term Government Funds, Delaware Group State Tax-Free Income Trust, Delaware Group Tax Free Fund, Delaware Pooled Trust, Delaware VIP Trust, Voyageur Insured Funds, Voyageur Intermediate Tax Free Funds, Voyageur Mutual Funds, Voyageur Mutual Funds II, Voyageur Mutual Funds III, and Voyageur Tax Free Funds (each, a ''Trust''), each a Delaware statutory trust registered under the Act as an open-end management investment company

offering one or more series, and Delaware Management Company, a series of Macquarie Investment Management Business Trust, a Delaware statutory trust registered as an investment adviser under the Investment Advisers Act of 1940 (''Adviser'') that serves an investment adviser to such series (collectively the ''Applicants'').

SUMMARY OF APPLICATION: The requested exemption would permit each Trust's board of trustees (the ''Board'') to approve new sub-advisory agreements and material amendments to existing sub-advisory agreements for the Subadvised Series (as defined below), without complying with the in-person meeting requirement of Section 15(c) of the Act.

FILING DATES: The application was filed on December 10, 2021 and amended on May 14, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on October 22, 2021, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Bruce G. Leto, Esq. at *BLeto@stradley.com* and Michael W. Mundt, Esq., at *MMundt@stradley.com.*

FOR FURTHER INFORMATION CONTACT: Keri E. Riemer, Senior Counsel, at (202) 551–8695, or Marc Mehrespand, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number or an Applicant using the ''Company'' name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

I. Requested Exemptive Relief

1. Applicants request an exemption from Section 15(c) of the Act to permit the Board,[1] including the Independent Board Members, [2] to approve an agreement (each a ''Sub-Advisory Agreement'') pursuant to which a sub-adviser manages all or a portion of the assets of one or more of the series, or a material amendment thereto (a ''Sub-Adviser Change''), without complying with the in-person meeting requirement of Section 15(c).[3] Under the requested relief, the Independent Board Members could instead approve a Sub-Adviser Change at a meeting at which members of the Board participate by any means of communication that allows them to hear each other simultaneously during the meeting.

2. Applicants request that the relief apply to Applicants, as well as to any future series of each Trust and any other existing or future registered open-end management investment company or series thereof that intends to rely on the requested order in the future and that: (i) is advised by the Adviser; [4] (ii) uses the multi-manager structure described in the application; and (iii) complies with the terms and conditions of the application (each, a ''Subadvised Series'').[5]

II. Management of the Subadvised Series

3. The Adviser will serve as the investment adviser to each Subadvised Series pursuant to an investment advisory agreement with each Trust (each an ''Investment Management Agreement''). The Adviser, subject to the oversight of the Board, will provide continuous investment management services to each Subadvised Series. Applicants are not seeking an exemption from the Act with respect to the Investment Management Agreements.

4. Applicants state that the Subadvised Series may seek to provide exposure to multiple strategies across various asset classes, thus allowing investors to more easily access such strategies without the additional transaction costs and administrative burdens of investing in multiple funds to seek to achieve comparable exposures.

5. To that end, the Adviser may achieve its desired exposures to specific strategies by allocating discrete portions of the Subadvised Series' assets to various sub-advisers. Consistent with the terms of each Investment Management Agreement and subject to the Board's approval,[6] the Adviser would delegate management of all or a portion of the assets of a Subadvised Series to a sub-adviser.[7] Each sub-adviser would be an ''investment adviser'' to the Subadvised Series within the meaning of Section 2(a)(20) of the Act.[8] The Adviser would retain overall responsibility for the management and investment of the assets of each Subadvised Series.

III. Applicable Law

6. Section 15(c) of the Act prohibits a registered investment company having a board from entering into, renewing or performing any contract or agreement whereby a person undertakes regularly to act as an investment adviser (including a sub-adviser) to the investment company, unless the terms of such contract or agreement and any renewal thereof have been approved by the vote of a majority of the investment company's board members who are not parties to such contract or agreement, or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

7. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or

[1] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Series (as defined below).

[2] The term ''Independent Board Members'' means the members of the Board who are not parties to the Sub-Advisory Agreement (as defined below), or ''interested persons'', as defined in Section 2(a)(19) of the Act, of any such party.

[3] Applicants do not request relief that would permit the Board and the Independent Board Members to approve renewals of Sub-Advisory Agreements at non-in-person meetings.

[4] The term ''Adviser'' includes (i) the Adviser or its successors and (ii) any entity controlling, controlled by, or under common control with, the Adviser or its successors. For the purposes of the requested order, ''successor'' is limited to an entity resulting from a reorganization into another jurisdiction or a change in the type of business organization.

[5] All registered open-end investment companies that currently intend to rely on the requested order are named as applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application.

[6] A Sub-Advisory Agreement may also be subject to approval by a Subadvised Series' shareholders. Applicants currently rely on a multi-manager exemptive order to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. *See* Delaware Management Business Trust, et al., Investment Company Act Release Nos. 32395 (Dec. 19, 2016) (notice) and 32423 (Jan. 17, 2017) (order).

[7] A sub-adviser may manage the assets of a Subadvised Series directly or provide the Adviser with model portfolio or investment recommendation(s) that would be utilized in connection with the management of a Subadvised Series.

[8] Each sub-adviser would be registered with the Commission as an investment adviser under the Advisers Act or not subject to such registration.

transactions from any provisions of the Act, or any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

IV. Arguments in Support of the Requested Relief

8. Applicants assert that boards of registered investment companies, including the Board, typically hold in-person meetings on a quarterly basis. Applicants state that during the three to four month period between board meeting dates, market conditions may change or investment opportunities may arise such that the Adviser may wish to make a Sub-Adviser Change. Applicants also state that at these moments it may be impractical, and/or costly to hold an additional in-person Board meeting, especially given the geographic diversity of Board members and the additional cost of holding in-person meetings.

9. As a result, Applicants believe that the requested relief would allow the Subadvised Series to operate more efficiently. In particular, Applicants assert that without the delay inherent in holding in-person Board meetings (and the attendant difficulty of obtaining the necessary quorum for, and the additional costs of, an unscheduled in-person Board meeting), the Subadvised Series would be able to act quicker and with less expense to add or replace sub-advisers when the Board and the Adviser believe that a Sub-Adviser Change would benefit the Subadvised Series.

10. Applicants also note that the in-person meeting requirement in Section 15(c) of the Act was designed to prohibit absentee approval of advisory agreements. Applicants state that condition 1 to the requested relief is designed to avoid such absentee approval by requiring that the Board approve a Sub-Adviser Change at a meeting where all participating Board members can hear each other and be heard by each other during the meeting.[9]

11. Applicants, moreover, represent that the Board would conduct any such non-in-person consideration of a Sub-Advisory Agreement in accordance with its typical process for approving Sub-Advisory Agreements. Consistent with Section 15(c) of the Act, the Board would request and evaluate such information as may reasonably be necessary to evaluate the terms of any Sub-Advisory Agreement, and the Adviser and sub-adviser would provide such information.

12. Finally, Applicants note that if one or more Board members request that a Sub-Adviser Change be considered in-person, then the Board would not be able to rely on the relief and would have to consider the Sub-Adviser Change at an in-person meeting.

V. Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Independent Board Members will approve the Sub-Adviser Change at a non-in-person meeting in which Board members may participate by any means of communication that allows those Board members participating to hear each other simultaneously during the meeting.

2. Management will represent that the materials provided to the Board for the non-in-person meeting include the same information the Board would have received if a Sub-Adviser Change were sought at an in-person Board meeting.

3. The notice of the non-in-person meeting will explain the need for considering the Sub-Adviser Change at a non-in-person meeting. Once notice of the non-in-person meeting to consider a Sub-Adviser Change is sent, Board members will be given the opportunity to object to considering the Sub-Adviser Change at a non-in-person Board meeting. If a Board member requests that the Sub-Adviser Change be considered in-person, the Board will consider the Sub-Adviser Change at an in-person meeting, unless such request is rescinded.

4. A Subadvised Series' ability to rely on the requested relief will be disclosed in the Subadvised Series' registration statement.

5. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

[9] Applicants state that technology that includes visual capabilities will be used unless unanticipated circumstances arise. Applicants also state that the Board could not rely upon the relief to approve a Sub-Advisory Agreement by written consent or another form of absentee approval by the Board.

Dated: September 27, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93122; File No. SR–CBOE–2021–041]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Certain Rules To Accommodate the Listing and Trading of Micro FLEX Index Options and To Make Other Clarifying and Non-Substantive Changes

September 24, 2021.

On July 23, 2021, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to accommodate the listing and trading of flexible exchange (''FLEX'') index options with an index multiplier of one (''Micro FLEX Index Options'') and to make other clarifying and non-substantive changes.[3] The proposed rule change was published in the **Federal Register** on August 12, 2021.[4] On September 22, 2021, the Exchange submitted partial Amendment No. 2 to the proposed rule change.[5] The Commission received no comments on the proposed rule change. The Commission is approving the proposed rule change, as modified by Amendment No. 2.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On August 4, 2021, the Exchange filed partial Amendment No. 1 to the proposed rule change. The Exchange withdrew partial Amendment No. 1 on August 6, 2021.

[4] Securities Exchange Release No. 92599 (August 6, 2021), 86 FR 44411 (August 12, 2021) (''Notice'').

[5] In Amendment No. 2, the Exchange stated that, currently, the Exchange lists non-FLEX options on 12 (not 13, as stated in the Exchange's original filing) broad-based indexes with a value of at least 100, and the proposed rule change would authorize the Exchange to list Micro FLEX Options on the same 12 indexes, which are all broad-based and all have a value of at least 100. The Exchange stated that it delisted options on FTSE 100 Mini-Index (UKXM). The Exchange also made a conforming change to its representation under the heading ''Capacity.'' Because Amendment No. 2 does not materially alter the substance of the proposed rule change, Amendment No. 2 is not subject to notice and comment. Amendment No. 2 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2021-041/srcboe2021041.htm.*

I. Description of the Proposed Rule Change, as Modified by Amendment No. 2

The Exchange proposes to amend its rules to permit the trading of FLEX index options with an index multiplier of one on broad-based indexes for which the value of the underlying is at least 100. The Commission recently approved a rule change that provided the Exchange with the authority to list options with an index multiplier of one on broad-based indexes for which the value of the underlying is at least 100 on the Exchange's standardized, non-FLEX market.[6]

Currently, CBOE Rule 4.21(b)(1) states the index multiplier for FLEX index options is 100. The Exchange proposes to add to the rule that the index multiplier for FLEX index options on broad-based indexes for which the value of the underlying is at least 100[7] may also be one in addition to the current index multiplier of 100. The proposed rule change amends CBOE Rule 4.21(b)(1) to state that if a FLEX Trader[8] specifies an index on a FLEX Order,[9] the FLEX Trader must also include whether the index option has an index multiplier of 100 or 1 when identifying the class of FLEX Order.[10] The Exchange states that, to the extent the Exchange lists a Micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.[11]

In its proposal, the Exchange stated that its rules permit trading in a put or call FLEX option series only if it does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX option series on the same underlying security or index that is already available for trading.[12] The Exchange proposes to add to the introductory paragraph of CBOE Rule 4.21(b) that a FLEX index option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX index option overlying the same index listed for trading (regardless of the whether the index multiplier of the non-FLEX index option is one or 100). As a result, a Micro FLEX Index Option may not have the same terms as a non-FLEX index option or non-FLEX micro-option. The Exchange states that this will prevent a Micro FLEX Index Option from being listed with terms identical to those of a non-FLEX index option with a multiplier of 100 or a non-FLEX micro-option with a multiplier of one on the same index.

The Exchange states that a Micro FLEX Index Option would become fungible[13] with a non-FLEX micro-option with the same terms pursuant to CBOE Rule 4.22(a), but would not be fungible with a non-FLEX option overlying the same index with a multiplier of 100 with the same expiration date, settlement, and exercise price. The Exchange states that because the proposed rule change would not permit a Micro FLEX Index Option to be listed with the same terms as a non-FLEX index option regardless of the index multiplier, proposed CBOE Rule 4.22(b)(2) will provide that if a non-FLEX index option series with an index multiplier of 100 and the same terms as a Micro FLEX Index Option overlying the same index is listed for trading, a position established under the FLEX trading procedures may be closed using the FLEX trading procedures in Chapter 5, Section F against another closing only FLEX position during the time period that non-FLEX index option series is listed for trading. During the time that non-FLEX index option series is listed for trading, pursuant to CBOE Rule 5.72, no FLEX Orders may be submitted into an electronic auction or represented for open outcry trading for a FLEX index option series with a multiplier of one with the same terms as the non-FLEX index option series overlying the same index with an index multiplier of 100, unless the FLEX Order is a closing order.[14] This proposed ''closing only'' process is similar to the current ''closing only'' process for non-FLEX option American-style series added intraday, as set forth in current CBOE Rule 4.22(b).[15] The Exchange states that this proposed change would prevent new Micro FLEX Index Option positions from being opened when a non-FLEX Index Option with a multiplier of 100 with the same terms is listed for trading.[16] In addition, as proposed, CBOE Rule 4.22(b) would require that the Exchange notifies FLEX

[6] *See* CBOE Rule 4.11 (providing for the listing of non-FLEX options with a multiplier of one (''micro-options''). *See* Securities Exchange Release No. 91528 (April 9, 2021), 86 FR 19933 (April 15, 2021). According to the Exchange, currently, the Exchange lists non-FLEX options on 12 broad-based indexes with a value of at least 100: S&P 500 Index, Mini-S&P 500 Index (XSP), Russell 2000 Index (RUT), Mini-Russell 2000 Index (MRUT), Dow Jones Industrial Average (DJX), S&P 100 Index (OEX and XEO), S&P 500 ESG Index (SPESG), MSCI EAFE Index (MXEA), MSCI Emerging Markets Index (MXEF), Russell 1000 Growth Index (RLG), Russell 1000 Value Index (RLV), and Russell 1000 Index (RUI). The Exchange states that the proposed rule change will authorize the Exchange to list Micro FLEX Index Options on the same 12 indexes, which are all broad-based and all have a value of at least 100. In Amendment No. 2, the Exchange stated that it may authorize for trading a FLEX option class on any index if it may authorize for trading a non-FLEX option class on that index, even if the Exchange does not list that non-FLEX option class for trading. Currently, the Exchange is authorized to (but does not) list for trading options on six additional broad-based indexes with values of at least 100. The Exchange stated that the Exchange's system currently prevents FLEX trading on these indexes (and other underlying securities and indexes on which the Exchange does not list non-FLEX options even though authorized to under its rules). If the Exchange updates its system in the future to permit FLEX trading on underlying securities or indexes on which the Exchange does not list non-FLEX options, Micro FLEX Index Options on these six indexes (assuming they still satisfied the Exchange's maintenance listing criteria in Rule 4.10 and had values of at least 100) would be permitted to be listed and traded. *See infra* note 27.

[7] These are the same indexes on which the Exchange may list micro-options.

[8] A ''FLEX Trader'' is a Trading Permit Holder the Exchange has approved to trade FLEX options on the Exchange.

[9] A ''FLEX Order'' is an order submitted in FLEX options. The submission of a FLEX Order makes the FLEX option series in that order eligible for trading. *See* CBOE Rule 5.72(b).

[10] When submitting a FLEX Order, the submitting FLEX Trader must include all required terms of a FLEX option series. These terms include, in addition to the underlying equity security or index, the type of options (put or call), exercise style, expiration date, settlement type, and exercise price. *See* CBOE Rule 4.21(b). Pursuant to CBOE Rule 4.21(b)(1), the submitting FLEX Trader must include the underlying equity security or index on the FLEX Order. The Exchange states that, therefore, each FLEX index option series in a Micro FLEX Index Option class will include the same flexible terms as any other FLEX option series, including strike price, settlement, expiration date, and exercise style as required by CBOE Rule 4.21(b).

[11] The Exchange states that, for example, a standard FLEX index option for index ABC with an index multiplier of 100 may have symbol 4ABC, while a Micro FLEX Index Option for index ABC with a multiplier of one may have symbol 4ABC9 and a non-FLEX option on index ABC with an index multiplier of 100 may have symbol ABC, while a non-FLEX micro-option would have a different symbol (such as ABC9).

[12] *See* CBOE Rule 4.21(a)(1).

[13] Under CBOE Rule 4.22(a), if the Exchange lists for trading a non-FLEX option series with identical terms as a FLEX option series, all existing open positions established under the FLEX trading procedures are fully fungible with the non-FLEX option series, and any further trading in the series would be as non-FLEX options subject to non-FLEX trading procedures and rules.

[14] The Exchange states that, to the extent the non-FLEX index option is later delisted, then opening trades of the Micro FLEX Index Option may resume after that occurs.

[15] The Exchange plans to renumber current CBOE Rule 4.22(b) as CBOE Rule 4.22(b)(1), accompanied by non-substantive punctuation mark changes to reflect proposed CBOE Rule 4.22(b)(2).

[16] As proposed, if the Exchange lists a non-FLEX index option with a multiplier of one with identical terms as a Micro FLEX Index Option, then current CBOE Rule 4.22(a) applies to the fungibility of those options (or proposed CBOE Rule 4.22(b)(1) if it is an American-style series added intraday) and the FLEX Micro Index Option would no longer be a FLEX option, but instead be traded as a standard micro-option.

Traders when a FLEX option series is restricted to closing only transactions.[17]

Trading Hours

Pursuant to CBOE Rule 5.1(b)(3)(A) and (c)(1), Micro FLEX Index Options will be available for trading during the same hours as non-FLEX Index Options pursuant to CBOE Rule 5.1(b)(2). Accordingly, Regular Trading Hours for Micro FLEX Index Options will generally be 9:30 a.m. to 4:15 p.m. Eastern time.[18] To the extent an index option is authorized for trading during Global Trading Hours, the Exchange states it may also list Micro FLEX Index Options during that trading session as well, the hours for which trading session are 3:00 a.m. to 9:15 a.m. Eastern time.

Expiration, Settlement, and Exercise Style

In accordance with CBOE Rule 4.21(b), FLEX Traders may designate the type (put or call), exercise style, expiration date, and settlement type of Micro FLEX Index Options.

Exercise Prices

The Exchange proposes to amend CBOE Rule 4.21(b)(6) to state that the exercise price for a FLEX index option series in a class with a multiplier of one is set at the same level as the exercise price for a FLEX index option series in a class with a multiplier of 100. To illustrate the deliverable exercise price for index options with different multipliers as well as physically settled equity options, the proposed rule change adds the following examples to CBOE Rule 4.21(b)(6) regarding how the deliverable for a Micro FLEX Index Option will be calculated (as well as for a FLEX index option with a multiplier of 100 and a FLEX equity option, for additional clarity and transparency): If the exercise price of a FLEX option series is a fixed price of $50, it will deliver: (A) 100 shares of the underlying security at $50 (with a total deliverable of $5,000) if a FLEX equity option; (B) cash equal to 100 (*i.e.,* the index multiplier) times 50 (with a total deliverable value of $5,000) if a FLEX index option with a multiplier of 100; and (C) cash equal to 1 (*i.e.,* the index multiplier) times 50 (with a total deliverable value of $50) if a Micro FLEX Index Option. If the exercise price of a FLEX option series is 50% of the closing value of the underlying security or index, as applicable, on the trade date, it will deliver: (A) 100 shares of the underlying security at a price equal to 50% of the closing value of the underlying security on the trade date (with a total deliverable of 100 times that percentage amount) if a FLEX Equity Option; (B) cash equal to 100 (*i.e.,* the index multiplier) times a value equal to 50% of the closing value of the underlying index on the trade date (with a total deliverable of 100 times that percentage amount) if a FLEX index option with a multiplier of 100; and (C) cash equal to 1 (*i.e.,* the index multiplier) times a value equal to 50% of the closing value of the underlying index on the trade date (with a total deliverable of one times that percentage amount) if a Micro FLEX Index Option. The Exchange states that the descriptions of exercise prices for FLEX equity options and FLEX index options with a multiplier of 100 are true today, and that the examples merely add clarity to the rules.

Bids and Offers

Pursuant to CBOE Rule 5.4(c), the Exchange states that it will determine the minimum increment for bids and offers on Micro FLEX Index Options (as it does for all other FLEX options) on a class-by-class basis, which may not be smaller than (1) $0.01, if the exercise price for the FLEX option series is a fixed price, or (2) 0.01%, if the exercise price for the FLEX option series is a percentage of the closing value of the underlying equity security or index on the trade date.[19] The proposed rule change amends CBOE Rule 5.3(e)(3) to describe the difference between the expression of bids and offers for FLEX equity options, FLEX index options with a multiplier of 100, and Micro FLEX Index Options. Currently, that rule states that bids and offers for FLEX options must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX option series is a percentage of the closing value of the underlying equity security or index on the trade date, per unit.[20] As noted above, a FLEX option contract unit consists of 100 shares of the underlying security or 100 times the value of the underlying index, as they currently have a 100 contract multiplier.[21]

The proposed rule change states that bids and offers for Micro FLEX Index Options must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX option series is a fixed price, or (b) a percentage per unit (if a FLEX equity option or a FLEX index option with a multiplier of 100) or per 1/100th unit (if a FLEX index option with a multiplier of one) of the underlying security or index, as applicable, if the exercise price for the FLEX option series is a percentage of the closing value of the underlying equity security or index on the trade date. Additionally, the proposed rule change adds examples describing how FLEX options bids and offers must be expressed. The proposed rule will state that, if the exercise price of a FLEX option series is a fixed price, a bid of ''0.50'' represents a bid of (A) $50 (0.50 times 100 shares) for a FLEX equity option; (B) $50 (0.50 times an index multiplier of 100) for a FLEX index option with a multiplier of 100; and (C) $0.50 (0.50 times an index multiplier of one) for a Micro FLEX Index Option. If the exercise price of a FLEX option series is a percentage of the closing value of the underlying equity security, a bid of ''0.50'' represents a bid of (A) 50% (0.50 times 100 shares) of the closing value of the underlying equity security on the trade date if a FLEX equity option; (B) 50% (0.50 times an index multiplier of 100) of the closing value of the underlying index on the trade date if a FLEX index option with a multiplier of 100; and (C) 0.50% (0.50 times an index multiplier of one) of the closing value of the underlying index on the trade date if a Micro FLEX Index Option. The Exchange states that it believes the proposed rule language identifies a clear, transparent

[17] The Exchange proposes to move this provision to make it clear it will apply to the entire paragraph (b) as proposed to be amended, and to make changes that it states would modernize this provision. Currently, CBOE Rule 4.22(b) states that a FLEX Official announces to FLEX Traders when such a FLEX option series is restricted to closing only transactions. The Exchange states that this was true when FLEX options were traded only in open outcry and a verbal announcement was made to the trading floor. The Exchange states that currently, because FLEX options are available for electronic and open outcry trading, the Exchange notifies FLEX Traders when a FLEX option series is restricted to closing only transactions. Accordingly, the Exchange proposes to revise Rule 4.22(b) to state that the Exchange notifies FLEX Traders when a FLEX Option series is restricted to closing only transactions. The Exchange also states that, in accordance with CBOE Rule 1.5, the Exchange currently notifies FLEX Traders of restricted FLEX option series by electronic message.

[18] Certain indexes close trading at 4:00 p.m. Eastern time. *See* CBOE Rule 5.1.

[19] The System (as defined in CBOE Rule 1.5(aa)) rounds bids and offers to the nearest minimum increment.

[20] The Exchange states that the proposed rule change reorganizes the language in this provision to make clear that the phrase ''if the exercise price for the FLEX option series is a percentage of the closing value of the underlying equity security or index on the trade date'' applies to the entire clause (B) of 5.3(e)(3). The proposed rule change also adds a cross-reference to CBOE Rule 5.4 to provide that bids and offers in U.S. dollars and decimals and percentages of the closing values of the underlying equity security or index on the trade date must be in the applicable minimum increment as set forth in CBOE Rule 5.4.

[21] *See* current CBOE Rule 4.21(b)(1).

description of the differences between FLEX index options with a multiplier of 100 and Micro FLEX Index Options and provides clarity regarding how bids and offers of FLEX equity options and FLEX index options with a multiplier of 100 will be required to be expressed.

Contract Size Limits

The Exchange states that the proposed rule change updates various other provisions in the following rules to reflect that 100 Micro FLEX Index Options overlying an index will be economically equivalent to one contract for a standard index option overlying the same index:

- *Rule 5.74:* CBOE Rule 5.74 describes the Exchange's FLEX Solicitation Auction Mechanism (''FLEX SAM''). An order, or the smallest leg of a complex order, must be for at least the minimum size designated by the Exchange (which may not be less than 500 standard option contracts or 5,000 mini-option contracts). The proposed rule change adds that 50,000 Micro FLEX Index Options is the corresponding minimum size for orders submitted into FLEX SAM Auctions.
- *Rule 5.87:* CBOE Rule 5.87(f) describes when a Floor Broker is entitled to cross a certain percentage of an order, subject to the requirements in that paragraph. Under that rule, the Exchange may determine on a class-by-class basis the eligible size for an order that may be transacted pursuant to that paragraph; however, the eligible order size may not be less than 50 standard option contracts (or 500 mini-option contracts or 5,000 for micro-options). The proposed rule change adds that 5,000 FLEX index option contracts with an index multiplier of one is the corresponding minimum size for orders that may be crossed in accordance with this provision. Additionally, CBOE Rule 5.87, Interpretation and Policy .07(a) provides that CBOE Rule 5.86(e)[22] does not prohibit a Trading Permit Holder (''TPH'') from buying or selling a stock, security futures or futures position following receipt of an order, including an option order, but prior to announcing such order to the trading crowd, provided that the option order is in a class designated as eligible for ''tied hedge'' transactions and within the eligibility size parameters, which are determined by the Exchange and may not be smaller than 500 standard option contracts (or 5,000 mini-option contracts or 50,000 micro-options). The proposed rule change adds that 50,000 FLEX index option contracts with a multiplier of one is the corresponding minimum size for orders that may qualify as tied hedge transactions and not be deemed a violation of CBOE Rule 5.86(e).

Position and Exercise Limits[23]

The proposed rule change amends CBOE Rule 8.35(a) regarding position limits for FLEX options to describe how Micro FLEX Index Options will be counted for purposes of determining compliance with position limits.[24] Because 100 Micro FLEX Index Options are equivalent to one FLEX index option with a multiplier of 100 overlying the same index due to the difference in contract multipliers, proposed CBOE Rule 8.35(a)(7) states that for purposes of determining compliance with the position limits under CBOE Rule 8.35, 100 Micro FLEX Index Option contracts equal one FLEX index option contract with a multiplier of 100 with the same underlying index. The proposed rule change makes a corresponding change to CBOE Rule 8.35(b) to clarify that, like reduced-value FLEX contracts, Micro FLEX Index Option contracts will be aggregated with full-value contracts and counted by the amount by which they equal a full-value contract for purposes of the reporting obligation in that provision (*i.e.,* 100 Micro FLEX Index Options will equal one FLEX index option contract with a multiplier of 100 overlying the same index).[25] The proposed rule change also adds that Micro FLEX Index Options on certain broad-based indexes for which FLEX index options with a multiplier of 100 have no position limits will also have no position limits. The proposed rule change amends CBOE Rule 8.42(g) to make corresponding changes regarding the application of exercise limits to Micro FLEX Index Options. This is consistent with the current treatment of other reduced-value FLEX index options with respect to position and exercise limits. The margin requirements set forth in Chapter 10 of the Exchange's Rules will apply to Micro FLEX Index Options (as they currently do to all FLEX options).[26]

Capacity

The Exchange represents that it believes the Exchange and Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of the Micro FLEX Index Options. Because the proposed rule change is limited to broad-based index options, which currently represent only 12 of the indexes on which the Exchange listed on the Exchange, the Exchange states that believes any additional traffic that may be generated from the introduction of Micro FLEX Index Options will be manageable.[27] The Exchange states that it also understands that the OCC will be able to accommodate the listing and trading of Micro FLEX Index Options.

Other Changes

The Exchange proposes to amend CBOE Rule 4.21(b)(6) to state that the exercise price may be in increments no smaller than: [28] (1) For a FLEX equity option or FLEX index option that is not Cliquet-settled, (a) $0.01, if the exercise price for the FLEX option series is expressed as a fixed price in terms of

[22] The Exchange states that CBOE Rule 5.86(e) provides that it will be considered conduct inconsistent with just and equitable principles of trade for any TPH or person associated with a TPH, who has knowledge of all material terms and conditions of an original order and a solicited order, including a facilitation order, that matches the original order's limit, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as an option that is the subject of the original order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (1) all the terms and conditions of the original order and any changes in the terms and conditions of the original order of which that TPH or associated person has knowledge are disclosed to the trading crowd or (2) the solicited trade can no longer reasonably be considered imminent in view of the passage of time since the solicitation. An order to buy or sell a ''related instrument,'' means, in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.

[23] The Exchange states that, to the extent the Exchange lists Micro FLEX Index Options on other indexes in the future, they would be subject to the same position and exercise limits set forth in the applicable rules, and similarly aggregated with standard options on the same indexes, as proposed.

[24] The proposed rule change also corrects an administrative error in CBOE Rule 8.35(a). Currently, there are two subparagraphs numbered as (a)(5). The proposed rule change amends paragraph (a) to renumber the second subparagraph (a)(5) to be subparagraph (a)(6).

[25] The Exchange states that, as it does today with respect to reduced-value indexes, the Exchange will count Micro FLEX Index Options as a percentage of a FLEX index option with a multiplier of 100 when calculating positions to determine compliance with position limits.

[26] According to the Exchange, pursuant to CBOE Rule 8.43(j), FLEX index options with a multiplier of one will be aggregated with non-FLEX index options on the same underlying index in the same manner as all other FLEX index options.

[27] The Exchange states that if it updates its system to permit FLEX trading on underlying securities and indexes on which it does not list non-FLEX options, including Micro FLEX Index Options trading on broad-based indexes with a value of at least 100, the Exchange would do so only if it had sufficient capacity to permit such additional trading. *See supra* note 6.

[28] The Exchange states that this language is taken from CBOE Rule 5.4(c)(4).

dollars and decimals or a specific index value, as applicable, or (b) 0.01%, if the exercise price for the FLEX option series is expressed as a percentage of the closing value of the underlying equity security or index on the trade date, as applicable. The proposed rule change also adds to CBOE Rule 4.21(b)(6) after subparagraph (B) that the Exchange may determine the smallest increment for exercise prices of FLEX options on a class-by-class basis. The Exchange states that these changes codify long-standing interpretations of the current rule, which references the minimum increment for bids and offers as set forth in CBOE Rule 5.4.[29] The Exchange states that it believes this will make the rule regarding permissible exercise prices for FLEX options more transparent and thus may eliminate potential confusion regarding permissible exercise prices.[30]

The proposed rule change moves the parenthetical regarding the system rounding the exercise price to the nearest minimum increment for bids and offers in the class (as set forth in CBOE Rule 5.4) from the introductory clause in CBOE Rule 4.21(b)(6) to the end of subclause (A)(ii) so that it applies only to that subclause, as rounding would only apply to exercise prices expressed as a percentage. The proposed rule change also adds to the parenthetical in CBOE Rule 4.21(b)(6)(A)(ii) that the system rounds the ''actual'' exercise price to the nearest fixed price minimum increment to provide additional clarity to the provision, as the dollar value of an exercise price expressed as a percentage determined after the closing value is available would be rounded to the nearest minimum dollar value increment, which dollar value would represent the ultimate, ''actual'' exercise price.

In addition, the proposed rule change clarifies in CBOE Rule 5.3(e)(3) and 5.4(c)(4) that, following application of the designated percentage to the closing value of the underlying security or index, the system rounds the final transaction prices (rather than bids and offers) of FLEX options to the nearest fixed price minimum increment for the class as set forth in CBOE Rule 5.4(c)(4)(A). The Exchange states that this is consistent with current functionality and is merely a clarification in the CBOE Rules to more accurately reflect how the System currently works.

In addition, the Exchange proposes to add a parenthetical in the first paragraph of CBOE Rule 5.3(e)(3)(B) to state that bids and offers would be in the applicable minimum increment as set forth in CBOE Rule 5.4. The Exchange states that this is true today and merely incorporates a cross-reference to CBOE Rule 5.4, which describes permissible minimum increments for bids and offers. The Exchange states that it believes the addition of this cross-reference will provide additional transparency and clarity to this rule.

The proposed rule change also codifies in CBOE Rules 5.72(c)(3)(A) and (d)(2), 5.73(e), and 5.74(e) how FLEX Auction response bids and offers (as well as Initiating Orders [31] and Solicited Orders [32] with respect to FLEX AIM Auctions and FLEX SAM Auctions, respectively) are ranked during the allocation process following each type of FLEX Auction (*i.e.,* electronic FLEX Auction, open outcry FLEX Auction, FLEX AIM Auction, and FLEX SAM Auction, respectively). The Exchange states that FLEX Orders will always first be allocated to responses at the best price, as applicable.[33] The proposed rule change clarifies that the term ''price'' refers to (1) the dollar and decimal amount of the order or response bid or offer or (2) the percentage value of the order or response bid or offer, as applicable. The Exchange states that these are non-substantive changes, as they reflect how ranking following FLEX Auctions occurs today, and the Exchange believes these changes will provide additional transparency in the CBOE Rules.

Finally, in CBOE Rule 4.22(b), the proposed rule change modernizes the provision regarding how FLEX Traders are notified when a FLEX option series becomes restricted. The Exchange also proposes to move this provision to make it clear it will apply to the entire paragraph (b) as proposed to be amended. Currently, CBOE Rule 4.22(b) states a FLEX Official [34] announces to FLEX Traders when such a FLEX option series is restricted to closing only transactions. The Exchange states that this was true when FLEX options were traded only in open outcry and a verbal announcement was made to the trading floor. The Exchange states that currently, because FLEX options are available for electronic and open outcry trading, the Exchange notifies FLEX Traders when a FLEX option series is restricted to closing only transactions. In accordance with CBOE Rule 1.5, the Exchange currently notifies FLEX Traders of restricted FLEX option series by electronic message.

II. Discussion and Commission Findings

After careful review of the proposal and the comments received, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[35] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,[36] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 FLEX options market was designed to accommodate flexibility in setting the specific terms of an options contract for the purpose of satisfying particular investment objectives that could not be met by the Exchange's standardized non-FLEX options market.[37] By permitting traders to adjust

[29] The Exchange states that the proposed rule change makes non-substantive changes to the structure of this sentence to accommodate the addition of the specific minimum increments for the exercise price.

[30] The Exchange also states that it believes flexibility for the Exchange to determine the smallest increment for exercise prices of FLEX options on a class-by-class basis is appropriate to permit the Exchange to make determinations based on the market characteristics of different classes. The Exchange notes the rules of another options exchange similarly permit that exchange to determine on a class-by-class basis both minimum increments for exercise prices and premiums (*i.e.,* bids and offers) stated using a percentage-based methodology. *See, e.g.,* NYSE Arca, Inc. Rule 5.32–O(e)(2)(C).

[31] ''Initiating Order'' is defined in CBOE Rule 5.37.

[32] ''Solicited Order'' is defined in CBOE Rule 5.39.

[33] The proposed rule change also clarifies this in CBOE Rule 5.72(d)(2) by adding a cross-reference to CBOE Rule 5.85(a)(1), which states that, with respect to open outcry trading on the Exchange's trading floor, bids and offers with the highest bid and lowest offer have priority. This is a non-substantive change that is currently true for open outcry FLEX Auctions, and the proposed rule change merely makes this explicit in CBOE Rule 5.72(d)(2), which cross-reference was previously inadvertently omitted from the CBOE Rules.

[34] ''FLEX Official'' is defined in CBOE Rule 5.75.

[35] In approving this proposed rule change, as modified by Amendment No. 2, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(5).

[37] *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 at 12281 (March 3, 1993) (original order approving a CBOE proposal to list and trade FLEX options on the S&P 100 and 500 Index options).

the flexible terms (*e.g.,* strike price, expiration date, and exercise style), market participants can trade customized options on the Exchange that are not available in the non-FLEX options market.[38] As discussed above, the Exchange may list options with an index multiplier of one on broad-based indexes for which the value of the underlying index is at least 100.[39] By permitting Micro FLEX Index Options on such indexes, the proposal will permit FLEX Traders to customize the flexible terms of such options that are authorized for trading on the non-FLEX market.

In support of its proposal, the Exchange states that the proposed rule change will expand investor choice and flexibility.[40] In particular, the Exchange states that listing and trading of Micro FLEX Index Options could benefit investors by providing them additional granularity with respect to the prices at which they may execute and exercise index options on the Exchange.[41] The Exchange states that, in particular, it believes that Micro FLEX Index Options would provide institutional investors with an additional exchange-traded tool to manage the positions and associated risk in their portfolios more precisely based on notional value, which currently may equal a fraction of a standard contract.[42] The Exchange states that, given the various trading and hedging strategies employed by investors, this additional granularity may provide investors with more control over the trading of their investment strategies and management of their positions and risk associated with option positions in their portfolios.[43] The Exchange further states that this flexibility is currently available on the OTC market, and believes that the proposed rule change may shift liquidity from the OTC market onto the Exchange, which the Exchange believes would increase market transparency as well as enhance price discovery through increased order flow.[44]

The Commission believes this proposal, which permits Micro FLEX Index Options only on broad-based indexes where the value of the underlying is at least 100, strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of FLEX options series. However, the Commission expects the Exchange to monitor the trading of Micro FLEX Index Options to evaluate whether any issues develop.

The Commission believes that the proposed rule change is consistent with the Act because it would provide investors with additional investment choices in FLEX options, while also implementing certain protections designed to avoid concerns related to price protections on the non-FLEX market and market fragmentation. In particular, the proposed rule requiring that terms of the Micro FLEX Index Option differ from those of a non-FLEX index option or non-FLEX micro-option can help to address concerns that FLEX options would act as a surrogate for the trading of non-FLEX options.[45] This is important given certain investor protections stated above that exist in the non-FLEX options market that are not present in the FLEX options market.[46] The proposed rule change states that a FLEX index option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX index option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX index option).[47] A Micro FLEX Index Option therefore may not have the same terms as a non-FLEX index option or non-FLEX micro-option. This will prevent a Micro FLEX Index Option from being listed with terms identical to those of a non-FLEX index option (with an index multiplier of 1 or 100) on the same index, and is thus designed to avoid price protection and market fragmentation concerns that could arise from trading options with identical terms on the FLEX and non-FLEX markets.

In addition, the Commission believes that the fungibility provisions under CBOE Rule 4.22 will facilitate this change by preventing new Micro FLEX Index Option positions from being opened when a non-FLEX index option with a multiplier of 100 with the same terms is listed for trading and by only permitting closing transactions in this situation.[48] Further, pursuant to CBOE Rule 4.22(a), a Micro FLEX Index Option with the same terms as a subsequently added non-FLEX micro-option would become fungible with the non-FLEX micro-option. Accordingly, once a non-FLEX micro-option is added with the same terms as an outstanding Micro FLEX Index Option, the Micro FLEX Index Option would no longer trade in the FLEX options market and instead would become a standardized, non-FLEX option and trade under the same rules that apply to any other standard non-FLEX micro-option.[49]

The Commission also believes that the proposal is consistent with the Act, in particular the protection of investors and the public interest, as it includes several aspects designed to reduce potential investor confusion. In particular, the Commission believes that the proposed treatment of exercise prices, bids and offers, size requirements for FLEX SAM auctions and for crossing orders, and position and exercise limits for Micro FLEX Index Options is consistent with the Act, as these proposed changes should make clear how Micro FLEX Index Options would be quoted and traded[50] and are consistent with the treatment of certain reduced-value index options and micro-options.[51] Additionally, the Commission believes that the use of different trading symbols for Micro FLEX Index Options should help

[38] The FLEX options market operates under a separate structure than the standardized non-FLEX options market (''non-FLEX options market'') and does not offer the same level of transparency as the non-FLEX options market. Among the differences between the market structure for FLEX options and non-FLEX options is that the FLEX options market does not have a public customer order book and there is no national best bid or offer (''NBBO'').

[39] *See supra* note 6.

[40] *See* Notice, *supra* note 4, 86 FR at 44416.

[41] *See id.* In the Notice, the Exchange provided examples of the trading of a Micro FLEX Index Options as compared to a FLEX index option with a multiplier of 100 and the potential benefits for investors. *See id.* at 44418–19.

[42] *See id.* at 44416–17.

[43] *See id.* at 44417.

[44] *See id.*

[45] *See supra* note 13 and 16.

[46] *See supra* note 38.

[47] *See* proposed CBOE Rule 4.21(b).

[48] *See* CBOE Rule 4.22. To facilitate this, the Exchange is providing that if an identical non-FLEX index option with an index multiplier of 100 is added with the same terms as a Micro FLEX Index Option overlying the same index with a multiplier of one, a position established under the FLEX trading procedures may be closed using the trading procedures against another closing only FLEX position during the time period that non-FLEX index option series is listed for trading. *See* proposed CBOE Rule 4.22(b)(2); *see also supra* notes 14–16 and accompanying text. In addition, as proposed, CBOE Rule 4.22 would state that the Exchange notifies FLEX Traders when a FLEX options series is restricted to closing only transactions. *See* proposed CBOE Rule 4.22(b)(2). The Commission believes that permitting such closing only transactions will help investors close out an outstanding Micro FLEX Index Option should a non-FLEX index option with a multiplier of 100 with the same terms subsequently be added.

[49] *See* CBOE Rule 4.22(a).

[50] The Commission also believes that the examples that the Exchange proposes to add to the rules provide clarity to the operation of the proposed rules. *See* CBOE Rule 4.21(b)(6) (exercise prices), CBOE Rule 5.3(e)(3) (bids and offers).

[51] The Exchange has made changes to provisions in its rules to reflect that 100 Micro FLEX Index Options will be economically equivalent to one contract for non-FLEX index option with a multiplier of 100 overlying the same index. *See* CBOE Rule 5.74 (order size for FLEX SAM), CBOE Rule 5.87 (crossing orders), CBOE Rule 8.35(a)(7) (position limits), CBOE Rule 8.42(g) (exercise limits).

investors and other market participants to distinguish those options from the related non-FLEX options with a multiplier of 100 and micro-options as well as FLEX index options with a multiplier of 100, reducing potential investor confusion.[52]

The Commission believes it is appropriate for Micro FLEX Index Options to trade pursuant to existing FLEX rules governing the listing and trading of FLEX index options. In addition, the Exchange states that it and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of Micro FLEX Index Options.[53] The Exchange also states that the OCC will be able to accommodate the listing and trading of Micro FLEX Index Options.

As a national securities exchange, the Exchange is required, under Section 6(b)(1) of the Act,[54] to enforce compliance by its members and persons associated with its members with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. The Exchange states that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior that might arise from listing and trading Micro FLEX Options. In addition, Micro FLEX Index Options will be traded under the Exchange's existing regulatory regime for FLEX index options, which includes, among other things, the Exchange's existing rules regarding customer protection, safeguards related to position and exercise limits, as applicable,[55] and reporting requirements. In particular, Micro FLEX Index Option orders entered by TPHs on behalf of customers, including institutional and retail customers, will be subject to all Exchange rules regarding doing business with the public, including those within Chapter 9 of the Exchange's Rules.[56] The Commission believes that it is consistent with the Act to apply Exchange rules governing, among other things, customer accounts, margin requirements, and trading halt procedures to the proposed Micro FLEX Index Options that are otherwise applicable to other FLEX index options. Further, the Commission believes that trading the Micro FLEX Index Options pursuant to the Exchange's current rules governing the trading of FLEX index options is consistent with the protection of investors and should provide market participants with the same flexibility to customize certain terms of the options while allowing investors to trade a smaller sized options contract that may, according to the Exchange, better meet their hedging needs.

The Commission also believes the proposed changes that the Exchange is making regarding codifying how percentage-based FLEX orders and auction responses will be ranked are consistent with the Act.[57] The Exchange states that such ranking provides FLEX Traders willing to pay more (or receive less) with priority.[58] The Exchange further states that providing priority to FLEX Traders that submit more aggressive responses will encourage FLEX Traders to submit competitive responses, which the Exchange believes will benefit investors.[59] In addition, the Exchange states that such ranking is consistent with the Exchange's current practice, as well as the way the Exchange ranks dollar-priced premiums.[60] For the foregoing reasons, the Commission believes that the proposed rule change regarding the ranking of percentage-based FLEX orders and options responses is consistent with the Act.

Finally, the Commission believes that the other non-substantive and clarifying changes will help protect investors and the public interest by providing clarity and transparency to the rules by making them easier to read and understand.[61]

Accordingly, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act[62] and the rules and regulations thereunder applicable to a national securities exchange.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[63] that the proposed rule change (SR–CBOE–2021–041), as modified by Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21211 Filed 9–29–21; 8:45 am]

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[52] *See supra* note 11.

[53] *See supra* note 27.

[54] 15 U.S.C. 78f(b)(1).

[55] There are, however, no position limits or exercise limits for certain broad-based FLEX index options. *See* CBOE Rule 8.35(b) and CBOE Rule 8.42(g).

[56] The Commission notes that these rules require, among other things, that: (i) A TPH may not accept an option order, including a Micro FLEX Index Option order, from a customer unless that customer's account has been approved for options transactions in accordance with CBOE Rule 9.1; (ii) TPHs that conduct customer business, including institutional and retail customer business, must ensure they provide for appropriate supervisory control over that business and maintain customer records in accordance with CBOE Rule 9.2; and (iii) TPHs will also need to provide customers that trade Micro FLEX Index Option (and any other option) with a copy of the ODD and amendments to the ODD in accordance with CBOE Rule 9.9 so that customers are informed of any risks associated with trading options, including Micro FLEX Index Options.

[57] *See* proposed amendments to CBOE Rule 4.21(b)(6), CBOE Rule 5.3(e)(3), and CBOE Rule 5.4(c)(4). As discussed above, following the application of the designated percentage to the closing value of the underlying security or index, the system rounds the final transaction prices to the nearest minimum fixed price increment for the class as set forth in Rule 5.4. *See* CBOE Rule 5.3(e)(3) and CBOE Rule 5.4(c)(4).

[58] *See* Notice, *supra* note 4 at 44420.

[59] *See id.*

[60] *See id.* at 44419.

[61] *See, e.g.,* proposed amendments to CBOE Rule 4.21(b)(6) (stating the minimum increments for exercise prices); CBOE Rule 4.22(b) (changing the terminology related to notification of when a FLEX option series is restricted to closing only transactions). *See also* proposed amendments to CBOE Rule 5.72(c)(3)(A); CBOE Rule 5.73(e); CBOE Rule 5.74(e) (codifying that FLEX auction response bids and offers as well as Initiating Orders and Solicitation Orders with respect to FLEX AIM Auctions and FLEX SAM Auctions, respectively, are ranked during the allocation process based on the dollar and decimal amount of the order or response bid or offer, or the percentage value of the order or response bid or offer, as applicable).

[62] 15 U.S.C. 78f(b)(5).

[63] 15 U.S.C. 78s(b)(2).

[64] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0680]

GC SBIC VI, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/02–0680 issued to GC SBIC VI, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2021–21297 Filed 9–29–21; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17041 and #17042; GEORGIA Disaster Number GA–00124]

Administrative Declaration Amendment of a Disaster for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of a disaster for the State of Georgia dated 07/20/2021.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/25/2021 through 03/26/2021.

DATES: Issued on 09/24/2021.

Physical Loan Application Deadline Date: 10/20/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 04/20/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of an Administrative declaration for the State of Georgia, dated 07/20/2021 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 10/20/2021.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2021–21247 Filed 9–29–21; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17165 and #17166; Pennsylvania Disaster Number PA–00113]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–4618–DR), dated 09/10/2021.

Incident: Remnants of Hurricane Ida.

Incident Period: 08/31/2021 through 09/05/2021.

DATES: Issued on 09/24/2021.

Physical Loan Application Deadline Date: 11/09/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/10/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of Pennsylvania, dated 09/10/2021, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Bedford, Northampton.

Contiguous Counties (Economic Injury Loans Only):

Pennsylvania: Blair, Cambria, Carbon, Fulton, Huntingdon, Monroe, Somerset.

Maryland: Allegany.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–21325 Filed 9–29–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17194 and #17195; Florida Disaster Number FL–00169]

Administrative Declaration of a Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated 09/24/2021.

Incident: Severe Storms and Flooding.

Incident Period: 08/03/2021 through 08/07/2021.

DATES: Issued on 09/24/2021.

Physical Loan Application Deadline Date: 11/23/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/24/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Taylor.

Contiguous Counties:

Florida: Dixie, Jefferson, Lafayette, Madison.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.125
Homeowners without Credit Available Elsewhere	1.563
Businesses with Credit Available Elsewhere	5.710
Businesses without Credit Available Elsewhere	2.855
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.855
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 17194 6 and for economic injury is 17195 0.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2021–21248 Filed 9–29–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17196 and #17197; CALIFORNIA Disaster Number CA–00347]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of California

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–4610–DR), dated 09/24/2021.

Incident: Wildfires.

Incident Period: 07/14/2021 and continuing.

DATES: Issued on 09/24/2021.

Physical Loan Application Deadline Date: 11/23/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/24/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/24/2021, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Lassen, Nevada, Placer, Plumas, Trinity.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 17196 5 and for economic injury is 17197 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–21320 Filed 9–29–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17039 and #17040; MICHIGAN Disaster Number MI–00099

Presidential Declaration Amendment of a Major Disaster for the State of MICHIGAN

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of MICHIGAN (FEMA–4607–DR), dated 07/15/2021.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/25/2021 through 06/26/2021.

DATES: Issued on 09/24/2021.

Physical Loan Application Deadline Date: 10/13/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 04/15/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of MICHIGAN, dated 07/15/2021, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Macomb, Oakland.

Contiguous Counties (Economic Injury Loans Only):

MICHIGAN: Genesee, Lapeer, Saint Clair.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–21323 Filed 9–29–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0474]

Tregaron Opportunity Fund II, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/09–0474 issued to Tregaron Opportunity Fund II, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2021–21299 Filed 9–29–21; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2021–0039]

Notice of Senior Executive Service Performance Review Board Membership

AGENCY: Social Security Administration.

ACTION: Notice of Senior Executive Service Performance Review Board Membership.

Title 5, U.S. Code, 4314 (c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before service on said Board begins.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration:

Bonnie Doyle, Chair
Antoinette Amrhein *
Seth Binstock
Jeffrey Buckner *
Kathryn Caldwell
Vikash Chhagan *
Stephen Evangelista
Florence Felix-Lawson
Kishayra Lambert
Jose (Joe) Lopez *

* New Member

Bonnie Doyle,

Assistant Deputy Commissioner for Human Resources.

[FR Doc. 2021–21200 Filed 9–29–21; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Delegation of Authority No. 519]

Delegation of Authority Sudan Claims Resolution Letters

By virtue of the authority vested in the Secretary of State by the laws of the United States, including the State Department Basic Authorities Act (codified in 22 U.S.C. 2651a(a)(4)), I hereby delegate to the Legal Adviser and the Deputy Legal Advisers, to the extent authorized by law, the functions and authorities of the Secretary of State described in § 1707(b) of the Sudan Claims Resolution Act (Title XVII of Division FF of Pub. L. 116–260).

The authority delegated herein may also be exercised by the Secretary, the Deputy Secretary, and the Deputy Secretary for Management and Resources. This delegation of authority does not supersede or affect any other delegation of authority currently in effect.

This document shall be published in the **Federal Register**.

Dated: September 16, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–21318 Filed 9–29–21; 8:45 am]

BILLING CODE 4710–08–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36513]

RJ Corman Railroad Company/ Tennessee Terminal, LLC—Lease and Operation Exemption With Interchange Commitment—BNSF Railway Company

RJ Corman Railroad Company/ Tennessee Terminal, LLC (RJ/TN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease from BNSF Railway Company (BNSF) and operate approximately 46.7 miles of rail line (the Lines) as follows: (1) The Tennessee Yard tracks in Shelby County, Tenn., consisting of (a) Track No. 0323 from a point west of Track No. 0324 to the point it connects with Track No. 2058 on the west end of the yard; (b) Track Nos. 2062, 2063, 2064, 2065, 0311, and 0312; (c) Track No. 1400, and all connected BNSF-owned industrial tracks north of the yard; (d) Track No. 1300, and all connected BNSF-owned industrial tracks north of the yard; (e) Track Nos. 1365, 1370, and 1375; (f) Track No. 1372; (g) Track No. 1500 from a point east of the Shelby overpass and all Hickory Hill Industrial Park leads owned by BNSF; and (h) Track Nos. 0892, 1202, 1204, 1207, and all connected BNSF-owned industrial tracks north of main track No. 2; (2) the Airport Industrial Park tracks, located in Shelby County, Tenn.; and (3) the Olive Branch, Mississippi Metro Industrial Park tracks in DeSoto County, Miss. RJ/TN states that the Lines generally do not have mileposts.

The verified notice states that RJ/TN is the current operator of the Lines.[1] According to RJ/TN, it and BNSF have entered into a lease agreement for the Lines, and RJ/TN will continue to operate the Lines after the transaction.

RJ/TN certifies that its projected annual revenue from this transaction will not exceed $5 million and will not result in RJ/TN's becoming a Class I or Class II rail carrier.

As required under 49 CFR 1150.43(h)(1), RJ/TN has disclosed in its verified notice that its lease agreement with BNSF contains an interchange commitment pertaining to interchange with carriers other than BNSF. RJ/TN has provided additional information regarding the interchange commitment as required by 49 CFR 1150.43(h).[2]

The earliest this transaction may be consummated is October 14, 2021 (30 days after the verified notice was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 7, 2021.

All pleadings, referring to Docket No. FD 36513, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, one copy of each pleading must be served on RJ/TN's representative: Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to RJ/TN, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: September 24, 2021.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2021–21250 Filed 9–29–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36537]

Ohio Rail Development Commission—Acquisition and Operation Exemption—City of Jackson, Ohio

Ohio Rail Development Commission (ORDC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the City of Jackson, Ohio (the City), and operate approximately 60.36 miles of rail line between milepost 0.00/127.0 at Hamden, Ohio, and milepost 32.76 at Firebrick, Ohio; between milepost 112.3 at West Junction, Ohio, and milepost 127.0 at Hamden; between milepost 127.71 at Hamden and milepost 136.71 at Red Diamond, Ohio; between milepost 91.6 at RA Junction, Ohio, and milepost 95.5 at West Junction, which is also known as milepost 112.3 (the Lines). ORDC also will acquire the following spur lines off the Hamden-Firebrick portion of the main line: The Buckeye Branch (an approximately 0.8-mile spur at milepost 2.6), the Meadow Run Branch (an approximately 1.3-mile spur at milepost 4.4), the Huron Branch (East) (an approximately 1.0-mile spur at milepost 13.1), the Huron Branch (West) (an approximately 4.8-mile spur at milepost 13.4), and the Pyro Spur (a 1.1-mile spur at milepost 23.6), as well as incidental trackage rights over 5.9 miles of former B&O/C&O rail lines (currently owned by CSX Transportation, Inc.) for interchange purposes, from milepost 91.6 at RA Junction to milepost 85.7 at VA Junction, near Vauces, Ohio.

The verified notice states that ORDC has reached an agreement with the City to acquire and operate the Lines and that Indiana Eastern Railroad, LLC d/b/a Ohio South Central Railroad will continue to provide operations over the Lines.

ORDC certifies that its projected annual revenues as a result of this transaction will not exceed the maximum revenue of a Class III rail carrier and will not exceed $5 million.

[1] *See R.J. Corman R.R. Tenn. Terminal, LLC—Lease & Operation Exemption—BNSF Ry.*, FD 34772 (STB served Feb. 3, 2006). RJ/TN notes that certain tracks have been renamed since that 2006 proceeding but the track numbers remain the same.

[2] A copy of the lease with the interchange commitment was submitted under seal. *See* 49 CFR 1150.43(h)(1).

ORDC also certifies that the proposed transaction does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier.

The earliest this transaction may be consummated is October 15, 2021, the effective date of the exemption (30 days after the verified notice was filed).[1]

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 8, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36537, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on ORDC's representative, Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Avenue NW, Suite 300, Washington, DC 20037.

According to ORDC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: September 24, 2021.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2021–21196 Filed 9–29–21; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2021–0017]

Request for Comments and Public Hearing About the Extension Review of the Safeguard Action on Imports of Certain Crystalline Silicon Photovoltaic Cells

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: On August 6, 2021, the United States International Trade Commission (ITC) instituted a review to determine whether the safeguard action currently in place on imports of crystalline silicon photovoltaic (CSPV) cells (whether or not partially or fully assembled into other products), continues to be necessary to prevent or remedy serious injury and whether there is evidence that the domestic industry is making a positive adjustment to import competition. The Office of the United States Trade Representative (USTR), on behalf of the Trade Policy Staff Committee (TPSC), is announcing a process so that, in the event of an affirmative determination by the ITC, interested parties may submit views and evidence on the appropriateness of extending the safeguard measure and the action to be taken should the safeguard measure be extended. USTR also invites interested parties to participate in a public hearing regarding this matter.

DATES:

December 15, 2021 by midnight EST: Deadline for written comments.

December 15, 2021 by midnight EST: Deadline for requests to testify at the public hearing.

December 22, 2021 by midnight EST: Deadline for any written responses to those comments.

January 4, 2022: TPSC public hearing.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov* (*Regulations.gov*). The instructions for submitting written submissions are in sections III and IV below. The docket number is USTR–2021–0017. For alternatives to online submissions, contact Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974 before transmitting a submission and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Victor Mroczka, Office of WTO and Multilateral Affairs, at *vmroczka@ustr.eop.gov* or (202) 395–9450, or Michael T. Gagain, Office of the General Counsel, at *Michael.T.Gagain@ustr.eop.gov* or (202) 395–9529.

SUPPLEMENTARY INFORMATION:

I. The Safeguard Measure on CSPV Products and the Extension Review

On January 23, 2018, the President, pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253), issued Proclamation 9693, imposing a safeguard measure on imports of CSPV products, in the form of a tariff-rate quota on imports of solar cells not partially or fully assembled into other products, and an increase in duties on imports of modules. 83 FR 3541 (Jan. 25, 2018). The measure took effect on February 7, 2018, for a period of four years, a period that ends on February 6, 2022. On October 10, 2020, the President issued Proclamation 10101, which made certain modifications to the safeguard measure announced in Proclamation 9693. 85 FR 65639 (Oct. 16, 2020).

On August 6, 2021, following the receipt of petitions filed by members of the domestic CSPV industry, the ITC instituted an investigation to determine, pursuant to section 204(c) of the Trade Act (19 U.S.C. 2254(c)), whether the safeguard measure continues to be necessary to prevent or remedy serious injury and whether there is evidence that the domestic industry is making a positive adjustment to import competition. *See* 86 FR 44403 (Aug. 12, 2021). Section 204(c)(3) of the Trade Act provides that, unless the President specifies a different date, the ITC must transmit to the President a report on its investigation and its determination not later than 60 days before the action taken under section 203 of the Trade Act is to terminate, which would be December 8, 2021.

If the ITC makes an affirmative determination pursuant to section 204(c)(1) and (c)(3) of the Trade Act, the President then, following receipt of the ITC's report, may extend the effective period of the safeguard measure on CSPV products if the President determines under section 203(e)(1)(B) of the Trade Act that the safeguard measure continues to be necessary to prevent or remedy the serious injury and there is evidence that the domestic industry is making a positive adjustment to import competition. Pursuant to section 203(e)(1)(B), the effective period of any action taken under section 203, including any extensions thereof, may not, in the aggregate, exceed eight years. Accordingly, any extension of the safeguard action on CSPV products may not exceed four years. If the President does not make this determination by February 6, 2022, the safeguard measure will terminate.

II. Proposed Measure and Opportunity To Comment

If the ITC makes an affirmative determination in its extension review under section 204(c) of the Trade Act, the TPSC will make a recommendation to the President regarding the determination to be made under section 203(e)(1)(B) of the Trade Act and the extent to which the effective period of the safeguard measure should be

[1] ORDC initially submitted its verified notice on September 3, 2021, but filed an errata on September 15, 2021, to correct a mistaken location description for milepost 85.7 and to provide a corrected certification supporting the verified notice. As such, September 15, 2021, is deemed the filing date of the verified notice.

extended. USTR, on behalf of the TPSC, invites comments from domestic producers, importers, exporters, and other interested parties on the determination that the President must make under section 203(e)(1)(B) of the Trade Act. In providing comments, we request that you address:

1. Whether the President should extend the action taken under section 203 on imports of CSPV products, as described in Proclamation 9693 and as modified in Proclamation 10101.

2. For how long the President should extend the action on imports of CSPV products.

3. Any other action that the President should take if the President decides to extend the action on imports of CSPV products and the statutory or other basis for taking that action.

If the ITC makes an affirmative determination, the TPSC will hold a public hearing on January 4, 2022. Due to COVID–19, details regarding the hearing, including the format (*i.e.,* whether it will be held in person or virtually) and schedule, will be provided at a later time and in advance of the hearing date.

III. Submission Instructions

If the ITC makes an affirmative determination, USTR seeks public comments with respect to the issues described in Section II. To be assured of consideration, you must submit written comments by midnight EST on December 15, 2021, and any written responses to those comments by midnight EST on December 22, 2021. All comments must be in English and must identify on the reference line of the first page of the submission 'Extension Review: CSPV Cells.' You should include a summary of no more than two pages that identifies the key points with your written comments.

The deadline to submit requests to testify at the public hearing is midnight EST on December 15, 2021. Requests to testify must include the following information: (1) Name, address, telephone number, email address, and firm or affiliation of the individual wishing to testify, and (2) a copy of your written comments. The TPSC will not accept written testimony at the hearing. You must include any materials you intend to use during your testimony with the written comments you submit.

All submissions must be in English and sent electronically via *Regulations.gov*. To submit comments via *Regulations.gov*, enter docket number USTR–2021–0017. Find a reference to this notice and click on the link entitled 'comment now!'. For further information on using *Regulations.gov*, please consult the resources provided on the website by clicking on 'how to use *regulations.gov*' on the bottom of the *Regulations.gov* home page. USTR will not accept hand-delivered submissions.

Regulations.gov allows users to submit comments by filling in a 'type comment' field or by attaching a document using an 'upload file' field. USTR prefers that you submit comments as an attached document. If you attach a document, it is sufficient to type 'see attached' in the 'type comment' field. USTR strongly prefers submissions in Adobe Acrobat (.pdf). If you use an application other than Adobe Acrobat or Word (.doc), please indicate the name of the application in the 'type comment' field.

File names should reflect the name of the person or entity submitting the comment. Please do not attach separate cover letters to electronic submissions; rather, include any information that would be in a cover letter in the comment itself. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files. For any comments submitted electronically that contain business confidential information (BCI), the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI by including 'BUSINESS CONFIDENTIAL' on the top of that page and clearly indicating, via brackets, highlighting, or other means, the specific information that is BCI. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that you would not customarily release the information to the public.

Filers of submissions containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the person or entity submitting the comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974 to discuss whether alternative arrangements are possible. Please do not include BCI in your request to testify.

USTR will post submissions in the docket for public inspection, except properly designated BCI. You can view submissions on *Regulations.gov* by entering docket number USTR–2021–0017 in the search field on the home page.

Edward Gresser,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2021–21261 Filed 9–29–21; 8:45 am]

BILLING CODE 3290–F1–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–1158]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: License Requirements for Operation of a Launch Site

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 to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 13, 2021. The information to be collected includes data required for performing launch site location analysis. The launch site license is valid for a period of 5 years. Respondents are licensees authorized to operate sites.

DATES: Written comments should be submitted by November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Charles Huet by email at: *charles.huet@faa.gov;* phone: 202–267–7427

SUPPLEMENTARY INFORMATION:

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.

OMB Control Number: 2120–0644.

Title: License Requirements for Operation of a Launch Site.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 13, 2021 (86 FR 2721). The data requested for a license application to operate a commercial launch site are required by 49 U.S.C. Subtitle IX, 701—Commercial Space Launch Activities, 49 U.S.C. 70101–70119 (1994). The information is needed in order to demonstrate to the FAA Office of Commercial Space Transportation (FAA/AST) that the proposed activity meets applicable public safety, national security, and foreign policy interest of the United States.

Respondents: Approximately 2 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 2322 Hours.

Estimated Total Annual Burden: 4644 Hours.

Issued in Washington, DC, on September, 27, 2021.

James Hatt,

Manager, ASZ–200.

[FR Doc. 2021–21279 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Federal Grant Assurance Obligations Hayfork Airport, Hayfork, Trinity County, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal and invites public comment on the application for release of approximately 1.33 acres of airport property at Hayfork Airport, Hayfork, California, from all conditions contained in Grant Agreement Assurances since the land is not needed for airport purposes. The property is located approximately 2,400-feet east ad 135-feet south of the Hayfork Airport Runway 25 threshold.

DATES: Comments must be received on or before November 1, 2021.

ADDRESSES: Comments on the request may be mailed or delivered to the FAA at the following address: Ms. Laurie Suttmeier, Manager, San Francisco Airports District Office, Federal Aviation Administration, 1000 Marina Boulevard, Suite 220, Brisbane, California, 94005–1863. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Randy Cessna, PE, Associate Engineer 2, Trinity County Department of Transportation, P.O. Box 2490, 31301 State Hwy 3, Weaverville, California 96093–0476.

SUPPLEMENTARY INFORMATION: The County acquired approximately 21.5-acres of land in 2001 for airport approach protection using Airport Improvement Program funds. This parcel is located approximately 2,400-feet east ad 135-feet south of the Hayfork Airport Runway 25 threshold. Recent surveying efforts revealed that an adjacent landowner has built a house on the land due to past poor surveying in the area. The County is selling the 1.33 acres of land with necessary easements and restrictions, so that it would continue to provide approach protection for Hayfork Airport, would correct the legal boundaries of the property and allow Trinity County to tax the property. Such use of the land represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation. The airport will be compensated for the fair market value of the use of the land.

In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the DOT Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

Issued in El Segundo, California on September 27, 2021.

Brian Q. Armstrong,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 2021–21327 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that it is appropriate to grant a Buy America waiver to the Iowa Department of Transportation (Iowa DOT) for procurement of foreign iron and steel components for two elevators or let-down structures for the pedestrian bridge associated with the I–74 Mississippi River Bridge Project in Bettendorf, Iowa, specifically including: (i) Traction elevator components; (ii) elevator guide rails; and (iii) certain auxiliary components of the elevators or let-down structures.

DATES: The effective date of the waiver is October 1, 2021.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, 202–366–1562, or via email at *Brian.Hogge@dot.gov*. For legal questions, please contact Mr. Patrick C. Smith, FHWA Office of the Chief Counsel, 202–366–1345, or via email at *Patrick.C.Smith@dot.gov*. Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *www.FederalRegister.gov* and the Government Publishing Office's database at: *www.GovInfo.gov*.

Background

FHWA's Buy America regulation in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not produced in the United States in sufficient and reasonably available quantities. This notice provides information regarding FHWA's finding that it is appropriate to grant Iowa DOT a Buy America waiver for procurement

of foreign iron and steel components for two elevators or let-down structures for the pedestrian bridge associated with the I–74 Mississippi River Bridge Project in Bettendorf, Iowa, specifically including: (i) Traction elevator components; (ii) elevator guide rails; and (iii) certain auxiliary components of the elevators or let-down structures.

Background on the I–74 Mississippi River Bridge Project: The city of Bettendorf, Iowa, through Iowa DOT, is seeking a Buy America waiver for two pedestrian elevators, or let-down structures, needed for a pedestrian bridge associated with the I–74 Mississippi River Bridge Project in Bettendorf, Iowa. The waiver request is for procurement of foreign iron and steel components for construction of the two elevators, specifically including: (i) Traction elevator components; (ii) elevator guide rails; and (iii) certain auxiliary components of the elevators or let-down structures.

The two elevators are part of the approximately $1.2 billion I–74 Mississippi River Bridge Reconstruction Project. The elevators are needed to meet accessibility requirements under the Americans with Disabilities Act, 42 U.S.C. 12101, *et seq.,* for a new pedestrian bridge. The elevators also provide additional safety for pedestrians and bicyclists. The pedestrian bridge and elevators will provide links to both the Illinois and Iowa river trail network.

The Pedestrian Bridge and elevators are included under an approximately $2.2 million contract. The city originally estimated that the elevators would cost approximately $427,000. This contract is 100 percent funded by the city of Bettendorf, Iowa, with no Federal funding. However, the pedestrian bridge and structures connecting the bridge to the trail network were included under the final environmental impact statement and record for the overall I–74 Mississippi River Bridge Project. Therefore, under 23 U.S.C. 313(g), FHWA's Buy America provision applies to the contract and letdown structure. All other contracts associated with the approximately $1.2 billion project are expected to comply with Buy America requirements.

Background on Waiver Request: The Iowa DOT originally submitted a Buy America waiver request letter to FHWA for certain components of the elevators in March 2020. Prior to requesting a waiver, the city of Bettendorf unsuccessfully attempted to identify domestic manufacturers for these products. The Iowa DOT reported to FHWA in the waiver request letter that the city contacted 11 U.S. elevator manufacturers, but none of them could produce elevators meeting the needs of the project using only U.S. steel. The March 2020 request letter sought a waiver for traction elevator components and elevator guide rails.

The elevators identified by Iowa DOT and the city as meeting the needs of the project are produced by KONE Oyj, a company with headquarters in Finland, but also with operations and facilities in the United States. Iowa DOT identifies the elevators as two Monospace 500 model elevators with glass rear walls.

After receiving the waiver request, in April 2020 FHWA requested that the Iowa DOT and the city of Bettendorf answer questions about their previous search for Buy America compliant products. FHWA also requested that they continue seeking to maximize the use of goods, products, and materials produced in the U.S. on the project. In response to this request and later follow-up questions from FHWA, the city of Bettendorf attempted over several additional months to identify domestic manufacturers that it had not identified in its original search, or, if full compliance was not possible, foreign manufacturers that could maximize use of domestic content by using greater quantities of U.S. steel. These additional search activities continued between April and August of 2020, but the city did not identify compliant products.

In August 2020, Iowa DOT responded to FHWA's questions. It explained that none of the manufacturers Iowa DOT or the city of Bettendorf contacted could satisfy Buy America requirements. It also explained that none of the manufacturers could provide reliable certifications of domestic content percentages (to show maximization of domestic content). After completing its additional research, Iowa DOT expanded its waiver request to include certain additional components of the elevator letdown structures. Iowa DOT explained that it could not find a manufacturer to meet Buy America requirements for additional auxiliary ''components [in the elevator letdown structures], such as mechanical air handling equipment.'' The contacted manufacturers explained that they were unable to verify the origin of source of materials to satisfy FHWA's Buy America requirements. Iowa DOT explained that these components are not frequently used in highway construction projects. Instead, they are predominantly used for commercial applications around the world, in which material source of origin certifications and Buy America requirements are not applicable.

The August 2020 letter from Iowa also explained that KONE Oyj was asked to review the potential for assembling non-standard elevators that would have a greater domestic steel and iron content to meet Buy America requirements. KONE Oyj provided an alternative design, but could still neither meet the Buy America requirements nor guarantee or certify the precise amount of domestic content. Moreover, the alternative design provided by KONE Oyj would not meet project requirements in terms of size, capacity, or safety. Regarding safety, elevators designed with unique, customized parts would be more difficult to maintain, which could impact the safety and reliability of their operation.

Iowa DOT's August 2020 letter also addressed alternative designs that were considered such as rack and pinion elevators. Iowa DOT explained that rack-and-pinion elevators, which are used primarily as freight elevators, were not suitable to the elevator's intended purpose of passenger transport. Moreover, adding structural elements to the project design to support rack-and-pinion elevators could increase project costs by $2 million. It did not consider this cost increase feasible. An alternative design would also result in significant delays for the project. At the time of the letter, the I–74 Mississippi River Bridge was scheduled to open to Iowa-bound vehicle traffic at the end of 2020 and to Illinois-bound vehicle traffic before the end of 2021. The bridge subsequently opened to Iowa-bound traffic in December 2020 and, as of September 2021, is currently facilitating two-way traffic (with two lanes in each direction) until construction is complete. The Illinois-bound section of the bridge is in the final stages of construction and is scheduled to open in December 2021.

In the August 2020 letter Iowa DOT also reported that other alternative designs were considered, but also could not fully comply with Buy America requirements for all components and would result in significantly higher construction costs and lengthy project redesign. Thus, Iowa DOT did not find justification for pursuing the alternative designs.

Iowa DOT also explained the current fiscal situation in the city of Bettendorf in the August 2020 letter. It explained that the COVID–19 public health emergency has caused financial hardship for the city and that any additional costs associated with Buy America compliance, such as completely redesigning the elevators or adding structural components, would impact the city's ability to complete the project and fund necessary services.

In October 2020, FHWA again contacted Iowa DOT with additional questions regarding its efforts to comply with Buy America and Executive Order 13788, 82 FR 18837 (Apr. 21, 2017), which was later revoked by Executive Order 14005. 86 FR 7475 (Jan. 28, 2021). FHWA also sought clarity on the scope of waiver the request. Later that month, Iowa DOT provided answers to FHWA's questions with additional information on its compliance efforts and a cost estimate sheet identifying all items for which it seeks a waiver (Exhibit D). A link to Exhibit D is included on the Notice of Buy America Waiver Request published on FHWA's website on January 5, 2021, as described below. All items included in the waiver request are identified as not meeting Buy America in the first column of Exhibit D. The estimated total cost of the waiver items is approximately $768,000. FHWA removed the cost estimates for individual line items in Exhibit D to maintain the confidentiality of the city's procurement-sensitive information during its solicitation process.

In accordance with the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94), FHWA published a notice seeking comment on whether a waiver was appropriate on its website, *https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=156*, on January 5, 2020.

The FHWA received 36 comments in response to the publication. Seven commenters opposed the waiver and 29 commenters generally expressed support for it. Six of the comments opposing the waiver did not offer any information on the availability of compliant products, nor did they suggest specific, additional actions that Iowa DOT could take to maximize its use of goods, products, and materials produced in the U.S. Another commenter opposing the waiver suggested obtaining additional certification documentation from suppliers but did not offer specific information on compliant products or means of identifying them. Thus, Iowa DOT did not receive any new information indicating that the subject parts could be produced by domestic manufacturers.

Although Iowa DOT did not identify compliant components for the let-down structures, it provided information to FHWA supporting its waiver request, including:

- Information describing its efforts to obtain the domestic content characteristics of the manufactured products needed;
- Information supporting the necessity of these specific let-down structures for the project's intended purpose of passenger transport and demonstrating that alternative designs were infeasible;
- Information documenting efforts to locate compliant manufactured products;
- Information documenting efforts to maximize domestic content even if full compliance was not possible, including efforts to have foreign manufacturers incorporate domestic steel; and
- Information describing the effects of denying the request.

The following sections summarize relevant information from Iowa DOT.

Although ultimately unsuccessful, Iowa DOT made substantial efforts to find suitable Buy America compliant components for the let-down structures.

Timing and Need for a Waiver. The Iowa DOT maintains that approval of a Buy America waiver for the relevant components of the let-down structures is now critical to maintain the schedule of ongoing construction on the project. The I–74 Mississippi River Bridge opened to Iowa-bound vehicle traffic at the end of 2020 and is scheduled to open to Illinois-bound vehicle traffic before the end of 2021. Iowa DOT believes it has exhausted its options for domestic alternatives.

Executive Order 14005. Executive Order 14005, ''Ensuring the Future is Made in All of America by All of America's Workers,'' provides that agencies should, consistent with applicable law, maximize the use of goods, products, and materials produced in, and services offered in, the U.S. 86 FR 7475 (Jan. 28, 2021). Based on the information contained in the waiver request from Iowa DOT and the lack of responsive comments following publication of a notice seeking comment on January 5, 2020, regarding available domestic manufacturers for the subject parts, FHWA concludes that issuing a waiver is not inconsistent with Executive Order 14005.

Finding and Request for Comments

Based on all the information available to the Agency, FHWA concludes that there are no Buy America-compliant relevant components for the let-down structures for the pedestrian bridge associated with the I–74 Mississippi River Bridge Project, specifically including: (i) Traction elevator components; (ii) elevator guide rails; and (iii) certain auxiliary components of the elevators or let-down structures. This finding only includes components identified in the waiver request and supporting documents included on FHWA's website.

Iowa DOT and its contractors and subcontractors involved in the procurement of the relevant components are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of Section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 5 days following the effective date of the finding. Comments may be submitted to FHWA's website via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161; 23 CFR 635.410.

Stephanie Pollack,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2021–21293 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–FMCSA–2021–0126]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Financial Responsibility Motor Carriers, Freight Forwarders, and Brokers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The purpose of this ICR titled, ''Financial Responsibility Motor Carriers, Freight Forwarders, and Brokers,'' is to provide registered motor carriers, property brokers, and freight forwarders a means of meeting financial responsibility filing requirements. This ICR sets forth the financial responsibility documentation requirements for motor carriers, freight forwarders, and brokers as a result of the Agency's jurisdictional statutes.

DATES: We must receive your comments on or before November 29, 2021.

ADDRESSES: You may submit comments identified by Federal Docket

Management System (FDMS) Docket Number FMCSA–2021–0126 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008. (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Lorenzo Allen, Lead Transportation Specialist, Office of Registration & Safety Information, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 385–2465; email *lorenzo.allen@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Transportation (Secretary) is authorized to register for-hire motor carriers of property and passengers under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registration requirements to the FMCSA under 49 CFR part 387. The registration remains valid only as long as these transportation entities maintain, on file with the FMCSA, evidence of the required levels of financial responsibility pursuant to 49 U.S.C. 13906. FMCSA regulations governing the financial responsibility requirements for these entities are found at 49 CFR part 387. The information collected from these forms are summarized and displayed in the Licensing and Information system.

Forms for Endorsements, Certificates of Insurance and Other Evidence of Bodily Injury and Property Damage (BI&PD) Liability and Cargo Liability Financial Responsibility

Forms BMC–91 and BMC–91X, titled ''Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance,'' and Form BMC–82, titled ''Motor Carrier Bodily Injury Liability and Property Damage Liability Surety Bond Under 49 U.S.C. 13906,'' provide evidence of the required coverage for bodily injury and property damage (BI & PD) liability. A Form BMC–91X filing is required when a carrier's insurance is provided by multiple companies instead of just one. Form BMC–34, titled ''Household Goods Motor Carrier Cargo Liability Certificate of Insurance,'' and Form BMC–83, titled ''Household Goods Motor Carrier Cargo Liability Surety Bond Under 49 U.S.C. 13906,'' establish a carrier's compliance with the Agency's cargo liability requirements. Only household goods (HHG) motor carriers are required to file evidence of cargo insurance with FMCSA. 49 CFR 387.303(c). Form BMC–90, titled ''Endorsement for Motor Carrier Policies of Insurance for Automobile Bodily Injury and Property Damage Liability Under Section 13906, Title 49 of the United States Code,'' and Form BMC–32, titled ''Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability Under 49 U.S.C. 13906,'' are executed by the insurance company, attached to BI & PD or cargo liability insurance policy, respectively, and forwarded to the motor carrier or freight forwarder.

Requirement To Obtain Surety Bond or Trust Fund Agreement

Form BMC–84, titled ''Broker's or Freight Forwarder's Surety Bond Under 49 U.S.C. 13906,'' and Form BMC–85, titled ''Broker's or Freight Forwarder's Trust Fund Agreement Under 49 U.S.C. 13906 or Notice of Cancellation of the Agreement,'' are filed by brokers or freight forwarders to comply with the requirement that they must have a $75,000 surety bond or trust fund agreement in effect before FMCSA will issue property broker or freight forwarder operating authority registration.

Cancellation of Prior Filings

Form BMC–35, titled ''Notice of Cancellation Motor Carrier Insurance under 49 U.S.C. 13906,'' Form BMC–36, titled ''Motor Carrier and Broker's Surety Bonds under 49 U.S.C. 13906 Notice of Cancellation,'' and Form BMC–85, titled ''Broker's or Freight Forwarder's Trust Fund Agreement Under 49 U.S.C. 13906 or Notice of Cancellation of the Agreement,'' can be used to cancel prior filings.

Self-Insurance

Motor carriers can also apply to FMCSA to self-insure BI & PD and/or cargo liability in lieu of filing certificates of insurance with the FMCSA, as long as the carrier maintains a satisfactory safety rating (see 49 CFR 387.309.) Form BMC–40 is the application used by carriers to apply for self-insurance authority.

Title: Financial Responsibility Motor Carriers, Freight Forwarders, and Brokers.

OMB Control Number: 2126–0017.

Type of Request: Renewal.

Respondents: For-hire Motor Carriers, Brokers, and Freight Forwarders.

Estimated Number of Respondents: 200,146.

Estimated Time per Response: The estimated average burden per response for Form BMC–40 is 40 hours. The estimated average burden per response for forms BMC–34, 35, 36, 82, 83, 84, 85, 91, and 91X is 10 minutes per form. In addition, form BMC–32 takes 10 minutes.

Expiration Date: February 28, 2022.

Frequency of Response: Certificates of insurance, surety bonds, and trust fund agreements are required when the transportation entity first registers with FMCSA and then when such coverages are changed or replaced by these entities. Notices of cancellation are required only when such certificates of insurance, surety bonds, and trust fund agreements are cancelled. The BMC–40 is filed only when a carrier seeks approval from FMCSA to self-insure its bodily injury and property damage (BI & PD) and/or cargo liability coverage.

Estimated Total Annual Burden: 49,359 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority delegated in 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2021–21195 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0050]

Hours of Service of Drivers; Parts and Accessories: Application for Exemptions Renewal for Cleveland-Cliffs Steel, LLC, Formerly Known as ArcelorMittal Indiana Harbor, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA renews the exemption granted Cleveland-Cliffs Steel, LLC (Cliffs), formerly ArcelorMittal Indiana Harbor, LLC, from certain hours-of-service (HOS) and cargo securement rules and requests public comment on the renewal. The renewal of the exemption allows Cliffs' employee-drivers with commercial driver's licenses (CDLs), who transport steel coils a fraction of a mile between their production and shipping locations on public roads, to continue to work up to 16 hours per day, and to operate with less than 10 consecutive hours off duty between work shifts. The renewal of the exemption also allows Cliffs to use metal coil carriers that do not meet the ''heavy hauler trailer'' definition, restrictions on the height of rear side marker lamps, tire loading restrictions, and the commodity-specific cargo securement requirements for metal coils. The Agency has concluded that granting the request for a renewal of the exemption will likely maintain a level of safety that is equivalent to or greater than the level of safety achieved through compliance with the specific regulatory requirements. The Agency requests comments on the Cliff's request for a renewal of the exemption.

DATES: The renewal of the exemption is effective September 23, 2021. Comments must be received on or before November 1, 2021.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2016–0050 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=FMCSA-2016-0050.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations, 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:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., 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.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (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 2021–0098), indicate the specific section of this document to which the 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/#!docketDetail;D=FMCSA-201-0050,* click on the ''Comment Now!'' 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.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov/#!docketDetail;D=FMCSA-2016-0050* and choose the document to review. 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., 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

DOT solicits comments from the public to better inform its regulatory process, in accordance with 5 U.S.C. 553(c). 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—Federal Docket Management System), which can be reviewed at *www.transportation.gov/privacy.*

II. Legal Basis

Under 49 U.S.C. 31136(e) and 31315(b)(1), FMCSA may renew an exemption from the Federal Motor Carrier Safety Regulations for 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.'' Cliffs has requested a five-year extension of the current exemption Docket No. FMCSA–2016–0050. The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

III. Background

Under 49 CFR 381.315(a), FMCSA must publish a notice of each exemption request in the **Federal Register**. The Agency must provide the public with 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 the safety analyses and the public comments 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)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

IV. Basis for Renewing Exemption

Cliffs, formerly ArcelorMittal, applied to renew an exemption that allows (1) its employee-drivers with CDLs, who transport steel coils between the company's production and shipping locations on public roads, to work up to 16 hours per day and return to work with less than the mandatory 10 consecutive hours off duty; and (2) to use coil carriers that do not meet the ''heavy hauler trailer'' definition, restrictions on the height of rear side marker lights, tire loading restrictions, and the coil securement requirements in part 393 of the FMCSRs. On September 23, 2016, FMCSA published a notice of final disposition granting the exemption until September 23, 2021 (81 FR 65574). The renewal outlined in this notice extends the exemption through September 23, 2026, and requests public comment.

Equivalent Level of Safety

With regard to the method to ensure that a level of safety equivalent to compliance with to the applicable FMCSRs, the Agency indicated in its September 23, 2016 notice that the company asserted that it has taken additional precautions to use public roadways for the shortest possible distances and only at controlled intersections. The Agency explained that the company ensures that all lights are properly working on both the tractor and trailer. It also flags and marks the vehicles as ''oversize'' loads. Trailers have conspicuity tape down the entire side to make them more visible to other traffic. FMCSA noted that the applicant believes that its additional precautions ensure a level of safety that is equivalent to or exceeds the level of safety achieved by following the regulations.

The company acknowledged in its application that the drivers would remain subject to all the other applicable Federal regulations. This includes qualification of drivers, controlled substance and alcohol testing. Also, the company would ensure full compliance with the inspection, repair and maintenance rules.

FMCSA emphasizes that the renewal of the exemptions would continue under extremely narrow conditions. One exemption enables the drivers them to work up to 16 consecutive hours in a duty period and return to work with a minimum of at least 8 hours off duty when necessary. This is somewhat comparable to current HOS regulations that allow certain ''short-haul'' drivers a 16-hour driving ''window'' once a week (49 CFR 395.1(o)) and other non-CDL short-haul drivers two 16-hour duty periods per week (49 CFR 395.1(e)(2)), provided specified conditions are met. However, current regulations require a minimum of 10 hours off duty between duty periods.

The other exemption is restricted to company's coil carriers as described in its application. The exemption enables CMVs that do not meet the parts and accessories requirements in part 393 to use two short segments of public highway to move coils from one part of the plant to another for shipment to its customers. The CMVs operated by Cleveland-Cliffs' drivers will be exposed to other traffic for very brief periods, as discussed above.

Preliminary Decision To Renew the Exemption

FMCSA is not aware of any evidence of a degradation in safety attributable to the current exemption for employee-drivers and trucks that transport metal coils. There is no indication of an adverse impact on safety while operating under the terms and conditions specified in the September 23, 2016 (81 FR 65574) notice of final determination.

The exemption is renewed subject to the requirements that only Cliff's drivers that transport steel coil are exempted from 49 CFR part 395. Drivers utilizing the exemption may work up to 16 consecutive hours in a duty period and return to work with a minimum of at least 8 hours off duty when necessary.

In addition, the exemption from certain sections in 49 CFR part 393 (§§ 393.5; 393.11 Table 1—Footnote 4; 393.75(f); and 393.120) is restricted to Cliffs' CMVs that transport coils. The CMVs must only cross on Riley Road, where they travel 80 feet and Dickey Road and 129th Street where they travel .2 miles to move coils from one part of the plant to another for shipment to its customers. All drivers must have CDLs and drivers and vehicles must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations. Cliffs must maintain any oversize-overweight permits required by local authorities.

The exemption will be rescinded if: (1) Cliffs fail 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.

The Agency believes that extending the exemption granted on September 23, 2016 for another five years, under the same terms and conditions, will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

V. Request for Comments

FMCSA requests comments from parties with data concerning the safety record of Cliffs' steel coil drivers and their respective trucks. 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, FMCSA will take immediate steps to revoke Cliff's renewal exemption.

John Van Steenburg,

Executive Director.

[FR Doc. 2021–21233 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0070]

Agency Information Collection Activities; Notice and Request for Comment; Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for extension of a currently approved information collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes NHTSA's information collection for incident reporting requirements for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS). NHTSA recently requested emergency review of its request for approval of this information collection and received a six-month approval. NHTSA now intends to follow the normal clearance procedures and request OMB's approval for a three-year extension of this currently approved information collection.

DATES: Comments must be submitted on or before November 29, 2021.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2021–0070 through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Jeff Eyres, Office of Chief Counsel, telephone (202) 913–4307, or email at *jeffrey.eyres@dot.gov,* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval (including a request for an extension of a currently approved collection), it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) 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; (b) 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; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including 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. In compliance with these requirements, NHTSA asks for public comments on the following proposed extension of a currently approved collection of information, for which the agency is seeking approval from OMB.

Title: Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS).

OMB Control Number: 2127–0754.

Form Number(s): Form 1612.

Type of Request: Approval of an extension of a currently approved collection of information.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information: The currently approved information collection request (ICR) for which NHTSA intends to request an extension requires certain manufacturers of motor vehicles and equipment and operators of motor vehicles to submit incident reports for certain crashes involving Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS). These crash reporting obligations are set forth in NHTSA's Standing General Order 2021–01 (General Order), which requires those manufacturers and operators named in and served with the General Order to report crashes that meet specified criteria to NHTSA.[1]

Specifically, the General Order requires the named manufacturers and operators (the reporting entities) to submit reports if they receive notice of certain crashes involving an ADS or Level 2 ADAS equipped vehicle that

[1] A copy of the General Order is available on NHTSA's website at *https://www.nhtsa.gov/laws-regulations/standing-general-order-crash-reporting-levels-driving-automation-2-5.*

occur on publicly accessible roads in the United States. To be reportable, the vehicle, the ADS, or the Level 2 ADAS must have been manufactured by the reporting entity or the vehicle must have been operated by a reporting entity at the time of the crash, and the ADS or Level 2 ADAS must have been engaged at the time of or immediately before (≤30 seconds) the crash. The reporting obligations are limited to those entities named in and served with the General Order. The General Order imposes no reporting obligations on any other companies and likewise imposes no reporting obligations on any individual consumers.

In the event of a reportable crash, the General Order requires the reporting entity to submit an incident report electronically to NHTSA. The required report includes basic information sufficient for NHTSA to identify those crashes warranting follow-up. Crashes involving ADS or Level 2 ADAS equipped vehicles that meet specified criteria must be reported within one calendar day after the reporting entity receives notice of the crash, and other crashes involving ADS equipped vehicles must be reported on a monthly basis. The reporting obligations in the General Order are specific to these crashes, which are a primary source of information regarding potential defects in ADS or Level 2 ADAS.

Under Request No. 1 of the General Order, a reporting entity must report any crash involving an ADS or Level 2 ADAS equipped vehicle that results in any individual being transported to a hospital for medical treatment, a fatality, a vehicle tow-away, or an air bag deployment or involves a vulnerable road user. Under these circumstances, the reporting entity must submit a report within one day after the reporting entity receives notice of the crash, and an updated report is due 10 days after receiving notice.

The 10-day report utilizes the same form and requests the same information as the one-day report. The 10-day report is a required follow up to the one-day report because it is anticipated that, for some of these reportable crashes, the reporting entity will have minimal information on the day after it first receives notice. The General Order therefore requires both the one-day report, to give the agency prompt notice of a crash that may justify immediate follow up, and the 10-day report, to give the reporting entity more time to gather information required by the incident report form. No additional or incremental information is required for the 10-day report.

Separately, under Request No. 2 of the General Order, a reporting entity must report any crash involving an ADS equipped vehicle that does not meet the previous criteria but nonetheless involves personal injury or property damage on the fifteenth day of the month after the reporting entity receives notice of the crash. Under Request No. 3 of the General Order, a reporting entity that receives new material or materially different information regarding a crash previously reported to NHTSA is required to file an updated report the following month. Finally, under Request No. 4 of the General Order, a reporting entity that has no new or updated crash reports under Request No. 2 or Request No. 3 for a given month must file a report stating so on the fifteenth day of the following month. The monthly reports and updated reports required under Request No. 2, Request No. 3, and Request No. 4 utilize the same form and request the same information as the one-day reports required under Request No. 1.

This information collection provides NHTSA with information it needs to carry out its statutory mandate to protect the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident.

NHTSA recently requested and received emergency review and approval of this information collection. NHTSA submitted the request on June 29, 2021. On June 30, 2021, OMB granted NHTSA a six-month approval for this information collection and assigned this information collection the OMB control number 2127–0754. NHTSA is publishing this document to seek an extension of this information collection.

Description of the Need for the Information and Proposed Use of the Information

Under the National Traffic and Motor Vehicle Safety Act, as amended (the Safety Act), 49 U.S.C. Chapter 301, NHTSA is charged with authority ''to reduce traffic accidents and deaths and injuries resulting from traffic accidents.'' To carry out this statutory mandate, NHTSA has broad information gathering authority, including authority to obtain information on vehicle crashes, potential defects related to motor vehicle safety, and compliance with legal requirements to timely identify and conduct recalls for safety defects. 49 U.S.C. 30166(e), (g), 30118–30120; 49 CFR part 510.

NHTSA's statutory mandate includes the exercise of its authority to proactively ensure that motor vehicles and motor vehicle equipment, including those with novel technologies, perform in ways that protect the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident. 49 U.S.C. 30102. Both ADS and ADAS are ''motor vehicle equipment'' subject to the requirements of the Safety Act. Given the rapid evolution of these technologies and increasing testing of new technologies and features on publicly accessible roads, it is critical for NHTSA to exercise its oversight over potential safety defects in vehicles operating with ADS and Level 2 ADAS. The Safety Act is preventive, and the identification of safety defects does not and should not wait for injuries or deaths to occur.

ADS and ADAS are new technologies that fundamentally alter the task of driving a motor vehicle. Crashes involving vehicles equipped with these technologies have resulted in multiple fatalities and serious injuries, and NHTSA anticipates that the number of these crashes will continue to grow in the near future given the increased number of these vehicles on the road and the increased number of vehicle and equipment manufacturers in the market. The General Order provides the agency with critical and timely safety data, which assists the agency in identifying potential safety issues resulting from the operation of advanced technologies on public roads. Access to this crash data may show whether there are common patterns in vehicle crashes or systematic problems with specific vehicles or systems, any of which may reflect a potential safety defect.

NHTSA intends to evaluate whether specific manufacturers (including manufacturers of prototype vehicles and equipment) are meeting their statutory obligations to ensure that their vehicles and equipment are free of defects that pose an unreasonable risk to motor vehicle safety, or are recalled if such a safety defect is identified. NHTSA's oversight of potential safety defects in vehicles operating on publicly accessible roads using ADS or Level 2 ADAS requires that NHTSA have timely information on incidents involving those vehicles. In carrying out the Safety Act, NHTSA may ''require, by general or special order, any person to file reports or answers to specific questions.'' 49 U.S.C. 30166(g)(1)(A).

Affected Public: Vehicle and equipment manufacturers and operators

of ADS or Level 2 ADAS equipped vehicles.

Estimated Number of Respondents: 110.

Frequency: Monthly and on occasion.

Estimated Total Annual Burden Hours: 11,745 hours.

To estimate the burden associated with this information collection, NHTSA separated the requirements of the General Order into seven components: (1) Incident reports involving Level 2 ADAS that must be submitted within one business day; (2) updates to incident reports involving Level 2 ADAS that must be submitted within ten days; (3) incident reports involving ADS that must be submitted within one business day; (4) updates to incident reports involving ADS that must be submitted within ten days; (5) monthly reports; (6) training employees on the requirements; and (7) time to set up an account to submit the reports. The burden associated with categories (6) and (7) are one-time start-up burdens that will be incurred during the proposed extension only to the extent that new reporting entities are added to the General Order during this period. For the 108 reporting entities currently named in the General Order, this burden has already been and was accounted for under the currently approved information collection request.

The estimated number of respondents consists of the number of reporting entities. NHTSA estimates that there will be an average of 110 reporting entities during each year of the proposed extension. Currently, there are 108 reporting entities named in the General Order. NHTSA believes that additional reporting entities will be added to the General Order during the proposed extension as new companies enter the market and begin developing and manufacturing ADS and ADAS technology and vehicles equipped with these technologies. NHTSA also believes that some existing reporting entities will be removed from the General Order due to the cessation of operations or market consolidation.

Incident reports involving Level 2 ADAS that must be submitted within one business day. To estimate the burden associated with submitting Level 2 ADAS crash reports, NHTSA first looked to the category of crashes that must be reported. As explained above, the General Order only requires reporting of Level 2 ADAS crashes when (1) the crash occurred on a publicly accessible road in the United States (including any of its territories); (2) the Level 2 ADAS was engaged at any time during the period from 30 seconds immediately prior to the commencement of the crash through the conclusion of the crash; and (3) the crash resulted in any individual being transported to a hospital for medical treatment, a fatality, a vehicle tow-away, an air bag deployment, or involved a vulnerable road user.[2] These crashes must be reported within one business day. Based on the number of manufacturers that manufacture vehicles equipped with Level 2 ADAS systems, NHTSA estimates that it will receive responses from 20 respondents reporting Level 2 ADAS crashes each year.

Further, after evaluating information available to the agency regarding the number of Level 2 ADAS crashes and the number of vehicles equipped with Level 2 ADAS, NHTSA estimates that it will receive, on average, 3,400 Level 2 ADAS crash reports each year. NHTSA believes this is a high-end estimate and will refine this estimate after seeking public comment. NHTSA expects that the number of crash reports submitted by each respondent will vary significantly, with some manufacturers submitting many more reports than others. However, on average, NHTSA estimates that each respondent will submit, on average 170 crash reports per year. NHTSA estimates that it will take respondents approximately 2 hours to compile and submit each crash report. Therefore, NHTSA estimates the total annual burden hours for submitting Level 2 ADAS crash reports to be 340 hours per manufacturer (2 hours × 170 crash reports) and 6,800 hours for all manufacturers (340 hours × 20 manufacturers).

Updates to incident reports involving Level 2 ADAS that must be submitted within ten days. In addition to submitting information on certain Level 2 ADAS crashes within one day, manufacturers must also submit updated information within ten days. NHTSA estimates that updating the crash reports will take approximately 1 hour per report. Therefore, NHTSA estimates that it will take each manufacturer approximately 170 hours each year to submit updated Level 2 ADAS crash reports (1 hour × 170 crash reports) and 3,400 hours for all Level 2 ADAS manufacturers (170 hours × 20 manufacturers).

Incident reports involving ADS that must be submitted within one business day. To estimate the number of one-day ADS crash reports NHTSA will receive in each year, NHTSA looked at the number of ADS crashes reported to California.[3] There were 105 ADS crashes reported to California in 2019.[4] NHTSA believes that it is reasonable to assume that about half of all ADS testing in the United States is occurring in California. Therefore, NHTSA expects that there will be approximately 200 ADS crashes in a year that manufacturers and operators will be required to report to NHTSA. Some of these crashes will be required to be submitted within one day and the rest will be required to be submitted on a monthly basis. The requirements for when ADS crashes must be reported within one day are the same as for Level 2 ADAS crashes: (1) The crash occurred on a publicly accessible road in the United States (including any of its territories); (2) the ADS was engaged at any time during the period from 30 seconds immediately prior to the commencement of the crash through the conclusion of the crash; and (3) the crash resulted in any individual being transported to a hospital for medical treatment, a fatality, a vehicle tow-away, or an air bag deployment or involves a vulnerable road user.

Based on NHTSA's review of the California crash reports, NHTSA believes that about half of the ADS crashes will be submitted in monthly reports, with the other half of crashes being submitted within one day. Therefore, NHTSA estimates that 100 ADS crash reports a year will be submitted within one day. NHTSA estimates that each ADS crash report will take 2 hours to complete and submit, including the time to submit updated reports. Therefore, NHTSA estimates the burden per respondent to be 2 hours (1 crash report × 2 hours) and 200 hours for all respondents (100 ADS crash reports × 2 hours).

Updates to incident reports involving ADS that must be submitted within ten days. In addition to submitting information on certain ADS crashes within one day, manufacturers and operators must also submit updated information within ten days. NHTSA

[2] A ''vulnerable road user'' is defined in the General Order to mean and include ''any person who is not an occupant of a motor vehicle with more than three wheels. This definition includes, but is not limited to, pedestrians, persons traveling in wheelchairs, bicyclists, motorcyclists, and riders or occupants of other transport vehicles that are not motor vehicles, such as all-terrain vehicles and tractors.''

[3] *See https://www.dmv.ca.gov/portal/vehicle-industry-services/autonomous-vehicles/autonomous-vehicle-collision-reports/.*

[4] NHTSA chose to use the 2019 data instead of using data from 2020 or an average of the two years because of the impact of the COVID–19 health emergency on ADS operations. We note that this is overinclusive because reports are only due to NHTSA when the ADS was in operation shortly before or during the crash.

estimates that updating the crash reports will take approximately 1 hour per report. Therefore, NHTSA estimates that it will take each manufacturer approximately 1 hour each year to submit updated ADS crash reports and 100 hours for all ADS manufacturers and operators (1 hour × 100 crash reports).

Monthly reports. This information collection requires respondents to submit monthly reports. ADS manufacturers and operators must report crashes in these monthly reports that are reportable but were not required to be submitted within one day. Additionally, both ADS manufacturers and operators and ADAS manufacturers will be required to submit information in monthly reports if they receive new material or materially different information about crashes for which the respondent already submitted reports (via one-day reports, 10-day update reports, or prior monthly reports). Further, as explained above, manufacturers and operators of ADS-equipped vehicles and Level 2 ADAS vehicles are required to submit monthly reports even when they do not have any new or updated crash reports under Request No. 2 or Request No. 3 to submit. If they do not have any reportable information under Requests Nos. 2 or 3, their monthly report is a simple certification. To estimate the burden of monthly reports, NHTSA considered the burden for monthly reports with initial ADS crash reports, monthly reports with updates to previously submitted crash reports, and those with certifications of no reportable information. NHTSA estimates there will be 110 Level 2 ADAS and ADS vehicle manufacturers and operators that will be required to submit monthly reports each year, for a total of 1,320 monthly reports annually.

NHTSA estimates that the burden for preparing and submitting monthly reports will vary depending on whether the monthly report includes no reportable information, new reportable information, or updates to previously submitted information. Some of these respondents may be required to submit only information about ADS crashes or Level 2 ADAS crashes and some may be required to submit information about both types of crashes. NHTSA estimates that because ADS equipped vehicles are often operated in small, controlled fleets, the reporting entities will readily know whether there have been any crashes that must be reported to NHTSA. Level 2 ADAS vehicles, however, are typically produced by large manufacturers and operated by consumers. Therefore, NHTSA estimates that each monthly report submitted by an ADS manufacturer or operator will take 15 minutes to submit, and for ADS manufacturers that have no reportable information to submit, this will be the only burden associated with submitting the monthly report. For manufacturers that also produce ADAS Level 2 vehicles, NHTSA estimates that submitting monthly reports will take 2 hours, which allow the manufacturer to verify whether the manufacturers have received any reportable information. NHTSA estimates that there will be 90 ADS manufacturers and operators and 20 manufacturers of Level 2 ADAS vehicles each year (including manufacturers that produce both Level 2 ADAS vehicles and ADS vehicles). Therefore, NHTSA estimates that annually respondents will spend 750 hours preparing and submitting monthly reports not including burden associated with providing new or updated reportable information (90 ADS manufacturers and operators × 12 monthly reports × 0.25 hours = 270 hours; 20 Level 2 ADAS manufacturers × 12 monthly reports × 2 hours = 480 hours; 270 + 480 = 750).

As described above, NHTSA estimates that there will be 200 ADS crash reports each year and 100 of those will be required to be submitted within one business day. The remaining 100 ADS crash reports will be submitted via monthly reports. NHTSA estimates that preparing and submitting monthly reports that contain crash reports to take, on average, 2 hours to prepare and submit. Therefore, NHTSA estimates the burden associated with preparing and submitting ADS crash report information that will be submitted in monthly reports to be 200 hours (100 monthly reports × 2 hours).

In addition to submitting information about new ADS crashes in monthly reports, respondents also are required to submit updated information in the following month if any new material or materially different information about any ADS or Level 2 ADAS incident is received. NHTSA estimates that for 20% of ADS crashes first reported in a monthly report (*i.e.,* not a one-day report), respondents will need to submit updated information. For ADS and Level 2 ADAS crashes that are reported within one business day, NHTSA estimates that respondents will need to submit updated information in monthly reports for 5% of those crashes (these would be updates in addition to those reported within ten days). Therefore, NHTSA estimates that 195 monthly reports will include updated crash information (100 ADS crashes first reported in monthly reports × 0.2 = 20 3,400 Level 2 ADAS one-day crashes × 0.05 = 170; 100 ADS one-day crashes × 0.05 = 5; 20 + 170 + 5 = 195). NHTSA estimates that providing updated information within a monthly report will take 1 hour. Therefore, NHTSA estimates the burden for monthly reports with updated information to be 195 hours (195 monthly reports × 1 hour).

The total burden associated with monthly reports is estimated to be 1,145 hours (750 hours + 200 hours + 195 hours), which averages to about 10.4 hours per respondent.

Training employees on the requirements. In addition to the burden associated with preparing and submitting reports, any new reporting entities added to the General Order are also expected to incur burden associated with training employees on the reporting requirements. As explained above, the existing 108 reporting entities named in the General Order will not incur this burden during the requested extension. NHTSA estimates that there will be an average of seven new reporting entities added to the General Order each year during the proposed extension, that an average of five of these new reporting entities will be ADS manufacturers or operators and that an average of two of these new reporting entities will be Level 2 ADAS manufacturers.

NHTSA expects that ADS manufacturers and operators normally monitor all crashes and, therefore, will not need to train personnel on how to respond to this new information collection. NHTSA, however, does expect that some Level 2 ADAS manufacturers may need to spend time training personnel on the requirements. Although the amount of time may vary by manufacturer, NHTSA estimates that, on average, the two Level 2 ADAS manufacturers will spend 40 hours on training. Therefore, NHTSA estimates the total annual burden for training to be 80 hours (2 manufacturers × 40 hours).

Time to set up an account to submit the reports. NHTSA also estimates that new responding entities added to the General Order during the proposed extension period will need to set up a new account with NHTSA to allow them to submit reports. NHTSA estimates that each of the estimated average of 10 responding entities added to the General Order annually need to set up new accounts with NHTSA. NHTSA estimates that setting up an account will take 2 hours. Therefore, NHTSA estimates the total annual burden to be 20 hours.

NHTSA estimates the total annual burden hours for the seven components of this ICR to be 11,745 hours (6,800 hours for initial one-day Level 2 ADAS reports, 3,400 hours for updated one-day Level 2 ADAS reports, 200 hours for initial one-day ADS reports, 100 hours for updated ADS reports, 945 hours for monthly reports, 80 hours for training, and 20 hours for setting up new accounts).

To calculate the labor cost associated with preparing and submitting crash reports and reports, training, and setting up new accounts, NHTSA looked at wage estimates for the type of personnel involved with these activities. NHTSA estimates the total labor costs associated with these burden hours by looking at the average wage for architectural and engineering managers in the motor vehicle manufacturing industry (Standard Occupational Classification # 11–9041). The Bureau of Labor Statistics (BLS) estimates that the average hourly wage is $65.62.[5] The Bureau of Labor Statistics estimates that private industry workers' wages represent 70.4% of total labor compensation costs.[6] Therefore, NHTSA estimates the hourly labor costs to be $93.21. Accordingly, NHTSA estimates the total labor cost associated with the 11,745 burden hours to be $1,168,760.

Table 1 provides a summary of the estimated burden hours and labor costs associated with those submissions.

TABLE 1—BURDEN ESTIMATES

Description of information collection component	Number of responses (number of respondents)	Estimated burden per response (burden per respondent) (hours)	Average hourly labor cost	Labor cost per response	Total burden hours	Total labor costs
Level 2 ADAS one-day reports, initial.	3,400 (*20*)	2 (*340*)	$93.21	$186.42	6,800	$633,828.
Level 2 ADAS one-day reports, update.	3,400 (*20*)	1 (*170*)	93.21	93.21	3,400	316,914.
ADS one-day reports, initial	100	2	93.21	186.42	200	18,642.
ADS one-day reports, update	100	1	93.21	93.21	100	9,321.
Monthly Reports	1,320 (*110*)	0.87 (*10.4*)	93.21	80.85	1,145	106,724.45 (106,724).
Training	2 (*2*)	40 (*40*)	93.21	3,728.40	80	7,456.80 (7,457).
Setting Up Account	10 (*10*)	2 (*2*)	93.21	186.42	20	1,864.20 (1,864).
Total	8,320 (*110*)				11,745	1,094,751.

Estimated Total Annual Burden Cost

NHTSA does not currently know whether manufacturers will incur additional costs, nor does NHTSA have a basis for estimating these costs. However, in the interim, NHTSA believes manufacturers will be able to comply with requirements by only incurring labor costs associated with the burden hours.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Ann E. Carlson,

Chief Counsel.

[FR Doc. 2021–21203 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Nissan North America, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Nissan North America, Inc.'s (Nissan) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its ARIYA vehicle line beginning in model year (MY) 2023. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. Nissan also requested confidential treatment for specific information in its petition. Therefore, no confidential information provided for purposes of this notice has been disclosed.

DATES: The exemption granted by this notice is effective beginning with the 2023 model year.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. Chapter 331, the Secretary of Transportation (and the National Highway Traffic Safety Administration (NHTSA) by delegation) is required to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major

[5] *See* May 2020 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 336100—Motor Vehicle Manufacturing, available at *https://www.bls.gov/oes/current/naics4_336100.htm#15-0000* (accessed June 21, 2021).

[6] *See* Table 1. Employer Costs for Employee Compensation by ownership (Mar. 2021), available at *https://www.bls.gov/news.release/ecec.t01.htm* (accessed June 21, 2021).

replacement parts to impede motor vehicle theft. NHTSA promulgated regulations at 49 CFR part 541 (theft prevention standard) to require parts-marking for specified passenger motor vehicles and light trucks. Pursuant to 49 U.S.C. 33106, manufacturers that are subject to the parts-marking requirements may petition the Secretary of Transportation for an exemption for a line of passenger motor vehicles equipped with an antitheft device as standard equipment that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with this statute, NHTSA promulgated 49 CFR part 543, which establishes the process through which manufacturers may seek an exemption from the theft prevention standard.

49 CFR 543.5 provides general submission requirements for petitions and states that each manufacturer may petition NHTSA for an exemption of one vehicle line per model year. Among other requirements, manufacturers must identify whether the exemption is sought under section 543.6 or section 543.7. Under section 543.6, a manufacturer may request an exemption by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements. Section 543.7 permits a manufacturer to request an exemption under a more streamlined process if the vehicle line is equipped with an antitheft device (an ''immobilizer'') as standard equipment that complies with one of the standards specified in that section.

Section 543.8 establishes requirements for processing petitions for exemption from the theft prevention standard. As stated in section 543.8(a), NHTSA processes any complete exemption petition. If NHTSA receives an incomplete petition, NHTSA will notify the petitioner of the deficiencies. Once NHTSA receives a complete petition the agency will process it and, in accordance with section 543.8(b), will grant the petition if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541.

Section 543.8(c) requires NHTSA to issue its decision either to grant or to deny an exemption petition not later than 120 days after the date on which a complete petition is filed. If NHTSA does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.[1] Exemptions granted under part 543 apply only to the vehicle line or lines that are subject to the grant and that are equipped with the antitheft device on which the line's exemption was based, and are effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later year.

Sections 543.8(f) and (g) apply to the manner in which NHTSA's decisions on petitions are to be made known. Under section 543.8(f), if the petition is sought under section 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the **Federal Register** and notifies the petitioner in writing. Under section 543.8(g), if the petition is sought under section 543.7, NHTSA notifies the petitioner in writing of the agency's decision to grant or deny the exemption petition.

This grant of petition for exemption considers Nissan Motor North America, Inc.'s (Nissan) petition for its ARIYA vehicle line beginning in MY 2023. Nissan's petition is granted under 49 U.S.C. 33106 and 49 CFR 543.8(c), which state that if the Secretary of Transportation (NHTSA, by delegation) does not make a decision about a petition within 120 days of the petition submission, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year. Separately, based on the information provided in Nissan's petition, NHTSA has determined that the antitheft device to be placed on its vehicle line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

I. Specific Petition Content Requirements Under 49 CFR 543.6

Pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention,* Nissan petitioned for an exemption for its specified vehicle line from the parts-marking requirements of the theft prevention standard, beginning in MY 2023. Nissan petitioned under 49 CFR 543.6, *Petition: Specific content requirements,* which, as described above, requires manufacturers to provide specific information about the antitheft device installed as standard equipment on all vehicles in the line for which an exemption is sought, the antitheft device's capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements.

More specifically, section 543.6(a)(1) requires petitions to include a statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which the exemption is sought. Under section 543.6(a)(2), each petition must list each component in the antitheft system, and include a diagram showing the location of each of those components within the vehicle. As required by section 543.6(a)(3), each petition must include an explanation of the means and process by which the device is activated and functions, including any aspect of the device designed to: (1) Facilitate or encourage its activation by motorists; (2) attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; (3) prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key; (4) prevent the operation of a vehicle which an unauthorized person has entered using means other than a key; and (5) ensure the reliability and durability of the device.[2]

In addition to providing information about the antitheft device and its functionality, petitioners must also submit the reasons for their belief that the antitheft device will be effective in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief,[3] and the reasons for their belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of part 541 in reducing and deterring motor vehicle theft. In support of this belief, the petitioners should include any statistical data that are available to the petitioner and form the basis for the petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar, line which have parts marked in compliance with part 541.[4]

The following sections describe Nissan's petition information provided pursuant to 49 CFR part 543, *Exemption*

[1] 49 U.S.C. 33106(d).

[2] 49 CFR 543.6(a)(3).

[3] 49 CFR 543.6(a)(4).

[4] 49 CFR 543.6(a)(5).

from Vehicle Theft Prevention. To the extent that specific information in Nissan's petition is subject to a properly filed confidentiality request, that information was not disclosed as part of this notice.[5]

II. Nissan's Petition for Exemption

In a petition dated April 19, 2021, Nissan requested an exemption from the parts-marking requirements of the theft prevention standard for the ARIYA vehicle line beginning with MY 2023.

In its petition, Nissan provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the ARIYA vehicle line. Nissan stated that its MY 2023 ARIYA vehicle line will be installed with a passive, electronic engine immobilizer device as standard equipment, as required by 543.6(a)(1). Key components of the antitheft device include an engine immobilizer, immobilizer control (CONT ASSY–SMART KEYLESS), power electronic box (PEB), immobilizer antenna and a key FOB with a pre-registered key-ID microchip. Nissan will not provide any visible or audible indication of unauthorized vehicle entry (*i.e.,* flashing lights and horn alarm) on its ARIYA vehicle line.

Pursuant to Section 543.6(a)(3), Nissan explained that activation of its immobilizer device occurs automatically when the ignition switch is turned to the ''OFF'' position. Nissan also stated that the immobilizer device prevents normal operation of the vehicle without using a special key. Nissan explained that when the brake SW is on and the key FOB is near the engine start switch, the CONT ASSY–SMART KEYLESS generates an electric field between the immobilizer antenna and the microchip incorporated in the specially designed ignition key. The microchip then transmits the key-ID via radio wave. Next, the key-ID is received by the antenna and is amplified and transmitted to the CONT ASSY–SMART KEYLESS. Nissan further stated that the PEB will ''request'' the CONT ASSY–SMART KEYLESS to start the encrypted communication, and once the code is accepted, the CONT ASSY–SMART KEYLESS will send an OK-code and an encrypted code to the PEB. If the code is not accepted, the immobilizer control unit will send a NG-code. Nissan stated that the PEB will only stop the motor if it receives a NG-code from the CONT ASSY–SMART KEYLESS, the encrypted code is not correct, or no signal is received from the CONT ASSY–SMART KEYLESS.

As required in section 543.6(a)(3)(v), Nissan provided information on the reliability and durability of its proposed device. Nissan stated that its antitheft device is tested for specific parameters to ensure its reliability and durability. Nissan provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test. Nissan stated that its immobilizer device satisfies the European Directive ECE R116, including tamper resistance. Nissan further stated that all control units for the device are located inside the vehicle, providing further protection from unauthorized accessibility of the device from outside the vehicle. Nissan also stated that if a potential intruder were to damage the immobilizer system, it is designed so that the motor cannot be restarted and that the motor will restart only after transmission of the correct Key-ID and encrypted code are accepted. Nissan stated that if an intruder were to substitute another immobilizer unit, the vehicle would still not be operable since the immobilizer and PEB are code-paired.

Nissan stated that the proposed device is functionally equivalent to the antitheft device installed on the MY 2011 Nissan Cube vehicle line which was granted a parts-marking exemption by the agency on April 14, 2010 (75 FR 19458). The agency notes that the theft rates for the Nissan Cube using an average of 3 MYs data (2012–2014), are 0.3322, 0.6471 and 2.0373 per thousand vehicles produced, respectively. For reference, the theft rate for MY 2014 passenger vehicles stolen in calendar year 2014 is 1.1512 thefts per thousand vehicles produced (82 FR 28246).

Nissan also referenced the National Insurance Crime Bureau's data which it stated showed a 70% reduction in theft when comparing MY 1997 Ford Mustangs (with a standard immobilizer) to MY 1995 Ford Mustangs (without an immobilizer). Nissan also referenced the Highway Loss Data Institute's data which reported that BMW vehicles experienced theft loss reductions resulting in a 73% decrease in relative claim frequency and a 78% lower average loss payment per claim for vehicles equipped with an immobilizer. Additionally, Nissan stated that theft rates for its Pathfinder vehicle line experienced reductions from model year (MY) 2000 to 2001 and subsequent years with implementation of an engine immobilizer device as standard equipment. Specifically, Nissan stated that the agency's theft rate data for MY's 2001 through 2005 reported theft rates of 1.9146, 1.8011, 1.1482, 0.8102, and 1.7298 respectively for the Nissan Pathfinder.

Nissan compared its device to other similar devices previously granted exemptions by the agency. Specifically, it referenced the agency's grant of full exemptions to General Motors Corporation for its Buick Riviera and Oldsmobile Aurora vehicle lines (58 FR 44872, August 25, 1993) and its Cadillac Seville vehicle line (62 FR 20058, April 24, 1997) from the parts-marking requirements of the theft prevention standard. Nissan stated that it believes that since its device is functionally equivalent to other comparable manufacturers' devices that have already been granted parts-marking exemptions by the agency, along with the evidence of reduced theft rates for vehicle lines equipped with similar devices and advanced technology of transponder electronic security, the Nissan immobilizer device will have the potential to achieve the level of effectiveness equivalent to those vehicles already exempted by the agency.

III. Decision To Grant the Petition

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541, or deemed approved under 49 U.S.C. 33106(d). As discussed above, in this case, Nissan's petition is granted under 49 U.S.C. 33106(d).

However, separately, NHTSA also finds that Nissan has provided adequate reasons for its belief that the antitheft device for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. This conclusion is based on the information Nissan provided about its antitheft device. NHTSA believes, based on Nissan's supporting evidence, the antitheft device described for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

The agency concludes that Nissan's antitheft device will provide four of the five types of performance features listed

[5] 49 CFR 512.20(a).

in section 543.6(a)(3): [6] promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the theft prevention standard for a given model year. 49 CFR 543.8(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the theft prevention standard.

If Nissan decides not to use the exemption for its requested vehicle line, the manufacturer must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which the exemption is based, the company may have to submit a petition to modify the exemption. Section 543.8(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption.''

The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if Nissan contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the ARIYA vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its MY 2023 vehicles.

Issued under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2021–21197 Filed 9–29–21; 8:45 am]

BILLING CODE 4910–59–P

[6] See, *e.g.,* 70 FR 74107 (Dec. 14, 2005). NHTSA has previously concluded that the lack of a visual or audio alarm has not prevented some antitheft devices from being effective protection against theft, where the theft data indicate a decline in theft rates for vehicle lines that have been equipped with devices similar to that what the petitioner is proposing to use.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[[Docket No. NHTSA–2019–0146; OMB No. 2127–0621]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Platform Lift Systems for Motor Vehicles, and Platform Lift Installations in Motor Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a reinstatement of a previously approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice (''30-day notice'') announces that the Information Collection Request (ICR) summarized below is being forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden and is a request for a reinstatement of a previously approved information collection regarding Platform lift systems for motor vehicles, and Platform lift installations in motor vehicles. A **Federal Register** Notice with a 60-day comment period soliciting comments on this information collection was published on February 6, 2020 (85 FR 7008). No comments were received.

DATES: Comments must be submitted on or November 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing the burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Michael Pyne, 202–366–4171, Office of Rulemaking (NRM230), National Highway Traffic Safety Administration, U.S. Dept. of Transportation, 1200 New Jersey Avenue SE, Room W43–457, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted to the OMB.

A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on February 6, 2020 (85 FR 7008). No comments were received in response to the 60-day notice.

Title: 49 CFR 571.403, *Platform lift systems for motor vehicles,* and 49 CFR 571.404, *Platform lift installations in motor vehicles.*

OMB Control Number: 2127–0621.

Type of Request: Reinstatement with changes of a previously approved information collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information: Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform lift systems for motor vehicles,* establishes minimum performance standards for platform lifts intended for installation in motor vehicles to assist wheelchair users and other persons of limited mobility in entering and exiting a vehicle. The standard's purpose is to prevent injuries and fatalities to passengers and bystanders during the operation of platform lifts. The related standard, FMVSS No. 404, *Platform lift installations in motor vehicles,* establishes specific requirements for vehicle manufacturers or alterers that install platform lifts in new vehicles. Lift manufacturers must certify that their lifts meet the requirements of

FMVSS No. 403 and must declare in the owner's manual, in the installation instructions, and on the operating instruction label, that the lift is certified. Certification of compliance with FMVSS No. 404 is included on the vehicle certification label required on all motor vehicles under 49 CFR part 567. Certain requirements in FMVSS No. 403 and FMVSS No. 404 contain information collections. FMVSS No. 403 requires lift manufacturers to produce an insert that is placed in the vehicle owner's manual and lift installation instructions. Additionally, lift manufacturers must affix either one or two labels to be placed near the controls for the lift. The latter illustrate and describe procedures for operating the lift. NHTSA's estimates of burden and cost to lift manufacturers to meet these requirements are described below. FMVSS No. 404 requires manufacturers or alterers that install platform lifts to insert the instructions provided by the lift manufacturer into the vehicle owners' manuals and ensure that labels with lift operating procedures are affixed to a location adjacent to the controls.

Description of the Need for the Information and Proposed Use of the Information: The information is used by:

- Platform lift installers so that they can ensure the correct type of lift—either public-use or private-use—is installed and has the necessary weight capacity, and that lifts are correctly installed and equipped with the minimum required lighting;
- Operators of public-use lifts so they have access to explanatory labels on lift controls and are aware of the lift operating capacity and maintenance requirements;
- Private-use lift owners so that they have access to explanatory labels on lift controls and are aware of the lift operating capacity and maintenance requirements.

Affected Public: Platform lift manufacturers and vehicle manufacturers or alterers that install platform lifts in motor vehicles prior to first vehicle sale. There is no burden on the general public.

Estimated Number of Respondents: 10.

NHTSA estimates that there are 10 platform-lift manufacturers doing business at a given time. Platform-lift manufacturers typically have a design cycle of approximately 5 years. Therefore, there are aspects of the information collection that only require the manufacturers to incur burden once every 5 years, such as changing the owner's manual inserts and labels. However, other aspects of the information collection, such as printing the inserts and labeling the lifts, require manufacturers to incur burden every year.

Estimated Number of Responses: 27,398 lifts manufactured in each of the next three years.

Estimated Total Annual Burden Hours: 1,562 hours.

NHTSA estimates that a total of 10 lift manufacturers will incur 1,562 hours of burden annually. This estimate is comprised of time to make changes to required language and the time to distribute that information by affixing labels or placards, placing inserts into owners' manuals, and providing installation instructions.

NHTSA estimates that every year approximately two lift manufacturers will need to change the language of the insert for the vehicle owners' manual stating the lift's platform operating volume, maintenance schedule, and operating procedures. NHTSA estimates that it will take manufacturers approximately 24 hours to make those changes. Therefore, NHTSA estimates that changes to the owners' manual inserts will take 48 hours annually (2 manufacturers × 24 hours = 48 hours per year).

NHTSA estimates that every year approximately two manufacturers will need to change the installation instructions identifying the types of vehicles on which each lift is designed to be installed. NHTSA estimates that it will take manufacturers approximately 24 hours to make those changes. Therefore, NHTSA estimates that changes to the installation instructions will take 48 hours annually (2 manufacturers × 24 hours = 48 hours per year).

NHTSA estimates that every year approximately two manufacturers will need to make changes to labels or placards which identify the operating functions of the lift. NHTSA estimates that it will take manufacturers approximately 24 hours to make those changes. Therefore, NHTSA estimates that changes to the labels or placards for lift functions will take 48 hours annually (2 manufacturers × 24 hours = 48 hours per year).

NHTSA estimates that every year approximately two lift manufacturers will need to make changes to labels and placards detailing back-up operating procedures. NHTSA estimates that it will take manufacturers approximately 24 hours to make those changes. Therefore, NHTSA estimates that changes to the language of labels or placards for back-up operating procedures will take 48 hours annually (2 manufacturers × 24 hours = 48 hours per year).

In addition to making periodic changes to the wording of the owners' manual inserts, installation instructions, and labels or placards for lift operating procedures and back-up operation; lift manufacturers also incur burden associated with distributing that information by affixing labels or placards, placing inserts into owners' manuals, and providing installation instructions.

NHTSA estimates that there will be 27,398 lifts manufactured in each of the next three years. NHTSA estimates that distributing the required information will take approximately 3 minutes per lift or approximately 1,370 hours for all lifts annually (27,398 lifts × 3 minutes per lift = 82,194 minutes; 82,194 minutes ÷ 60 = 1,370 hours).

	Lift manufacturers	Hours to make change	Annual hours
Per Year Insert Language:	2	24	48
Per Year Install Instruct.:	2	24	48
Per Year Label Change/Operating:	2	24	48
Per Year Label Change/Back-up:	2	24	48
	Lifts-each year next 3 years	Mins. to distribute	Total hours
Distribution	27,398	3	1,370
	Estimated Total Burden Hours:		1,562

The labor cost associated with the burden hours is derived by applying appropriate hourly labor rates published by the Bureau of Labor Statistics [1] (BLS) to the hourly burden discussed previously in this notice. There are two categories of labor involved. First, for ''Assemblers and Fabricators'' (Occupation code 51–2000) with an average wage of $22.94/hour, the labor rate is $32.72/hour (based on BLS statistics showing wages for private industry workers are 70.1 percent of total compensation [2]). Multiplying that hourly labor rate, by the estimated 1,370 labor hours needed annually to affix and distribute the required informational materials, yields an annual labor cost of $44,832.81. Second, for ''Technical Writers'' (Occupation code 27–3042) with an average wage of $33.98/hour, the labor rate is $47.47/hour. Multiplying that hourly labor rate, by the estimated 192 labor hours needed for revisions to labels and printed materials, yields an annual labor cost of $9,306.93.

The total annual labor cost is thus estimated to be $54,139.74.

	Average wage	Percent of total compensation	Labor rate	Annual hours	Annual labor cost
Assemblers and Fabricators:	$22.94	70.1	$32.72	1,370	$44,832.81
Technical Writers:	33.98	70.1	48.47	192	9,306.93
	Estimated Annual Labor Cost for This Information Collection:				54,139.74

Estimated Total Annual Burden Cost: The cost of this collection of information will include printing costs. NHTSA's estimate of printing costs is broken down as follows:

- Owner's manual inserts—27,398 lifts × $0.04 per page × 1 page = $1,095.92
- Installation instructions—27,398 lifts × $0.04 per page × 1 page = $1,095.92
- Label/placard for lift operating procedures—27,398 lifts × $0.13 per label = $3,561.74
- Label/placard for lift backup operation—27,398 lifts × $0.13 per label = $3,561.74

Based on this breakdown, NHTSA estimates the total printing cost associated with this information collection is $9,315.32 annually.

	Lifts-each year in next 3 years	Per unit	Total cost
Owner's Manual Insert:	27,398	$0.04	$1,095.92
Install Instructions:	27,398	0.04	1,095.92
Label Change/Operating Procedure:	27,398	0.13	3,561.74
Label Change/Back-up Operation:	27,398	0.13	3,561.74
Estimated Annual Printing Cost for This Information Collection:			9,315.32

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) 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; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35; as amended; 49 CFR 1.49; and DOT Order 1351.29.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2021–21198 Filed 9–29–21; 8:45 am]

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[1] Available online at *https://www.bls.gov/oes/current/naics4_336100.htm.*

[2] See Table 1 at *https://www.bls.gov/news.release/pdf/ecec.pdf.*

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removal of 23 Extinct Species From the Lists of Endangered and Threatened Wildlife and Plants; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E22000 FXES11130900000 201]

RIN 1018–BC98

Endangered and Threatened Wildlife and Plants; Removal of 23 Extinct Species From the Lists of Endangered and Threatened Wildlife and Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove 23 species from the Federal Lists of Endangered and Threatened Wildlife and Plants due to extinction. This proposal is based on a review of the best available scientific and commercial information, which indicates that these species are no longer extant and, as such, no longer meet the definition of an endangered species or a threatened species under the Endangered Species Act of 1973, as amended (Act). We are seeking information and comments from the public regarding this proposed rule.

DATES: We will accept comments received or postmarked on or before November 29, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 15, 2021.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the appropriate docket number (see table under *Public Comments* in **SUPPLEMENTARY INFORMATION**). Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: [Insert appropriate docket number; see table under *Public Comments* in **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Bridled white-eye, Kauai akialoa, Kauai nukupuu, Kauai ʻoʻo (honeyeater), large Kauai thrush (kama), little Mariana fruit bat, Maui akepa, Maui nukupuu, Molokai creeper (kakawahie), *Phyllostegia glabra* var. *lanaiensis* (no common name), and poʻouli (honeycreeper).	Earl Campbell, Field Supervisor, Pacific Islands Fish and Wildlife Office, 808–792–9400, 300 Ala Moana Boulevard, Suite 3–122, Honolulu, HI 96850.
Bachman's warbler	Thomas McCoy, Field Supervisor, South Carolina Field Office, 843–300–0431, 176 Croghan Spur, Charleston, SC 29407.
Flat pigtoe, southern acornshell, stirrupshell, and upland combshell	Stephen Ricks, Field Supervisor, Mississippi Field Office, 601–321–1122, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213.
Green blossom (pearly mussel), tubercled blossom (pearly mussel), turgid blossom (pearly mussel), and yellow blossom (pearly mussel).	Daniel Elbert, Field Supervisor, Tennessee Field Office, 931–528–6481, Interior Region 2—South Atlantic-Gulf (Tennessee), 446 Neal Street, Cookeville, TN 38506.
Ivory-billed woodpecker	Joe Ranson, Field Supervisor, Louisiana Field Office, 337–291–3113, 200 Dulles Dr., Lafayette, LA 70506.
San Marcos gambusia	Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, 512–490–0057 (ext. 248), 10711 Burnet Rd., Suite 200, Austin, Texas 78758.
Scioto madtom	Patrice Ashfield, Field Supervisor, Ohio Ecological Services Field Office, 614–416–8993, 4625 Morse Road, Suite 104, Columbus, OH 43230.

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. Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (List or Lists) in 50 CFR part 17. Under our regulations at 50 CFR 424.11(e)(1), a species shall be delisted if, after conducting a status review based on the best scientific and commercial data available, we determine that the species is extinct. The 23 species within this proposed rule are currently listed as endangered or threatened; we are proposing to delist them due to extinction. We can only delist a species by issuing a rule to do so.

What this document does. We propose to remove 23 species from the Lists due to extinction.

The basis for our action. We may determine that a species should be removed from the List because it no longer meets the definition of an endangered species or a threatened species, including whether the best available information indicates that a species is extinct.

Information Requested

Public Comments

We intend that any final rule resulting from this proposal will be based on the best available scientific and commercial data and will be as accurate and effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. Comments should be as specific as possible. We are specifically requesting comments on any additional information on whether these species

are extant or extinct. This information can include:

(1) Any information that indicates whether the best available information supports a determination that one of the species is or is not extinct, including:

(a) Biological or ecological requirements as it relates to the detectability of the species, including but not limited to: Lifespan, life stage, maturation period, physical description and ease of identification, vocalization, and habitat requirements for feeding, breeding, and sheltering;

(b) Survey efforts past and current including information on how extensive the surveys were, the methodology used in the survey, and how effective were the methods used to detect the species (*i.e.,* were the surveys designed to effectively detect the species if it is present in the area?); or

(c) Last sighting of the species including a description of location of the sighting, the type of sighting (*e.g.,* visual or auditory), length of time since last detection, and the frequency of last sightings.

(2) Factors that may have resulted in the extinction of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

You may submit your comments or materials electronically, or view a detailed description of the basis for a species determination, on the internet at *http://www.regulations.gov* under the following docket numbers:

Species	Docket No.
Kauai akialoa	FWS–R1–ES–2020–0104
Kauai nukupuu	FWS–R1–ES–2020–0104
Kauai ʻoʻo (honeyeater)	FWS–R1–ES–2020–0104
Large Kauai thrush (kam'a)	FWS–R1–ES–2020–0104
Maui akepa	FWS–R1–ES–2020–0104
Maui nukupuu	FWS–R1–ES–2020–0104
Molokai creeper (kakawahie)	FWS–R1–ES–2020–0104
Poʻouli (honeycreeper)	FWS–R1–ES–2020–0104
Bridled white-eye	FWS–R1–ES–2020–0104
Little Mariana fruit bat	FWS–R1–ES–2020–0104
Phyllostegia glabra var. *lanaiensis* (no common name)	FWS–R1–ES–2020–0104
San Marcos gambusia	FWS–R2–ES–2020–0105
Scioto madtom	FWS–R3–ES–2020–0106
Flat pigtoe	FWS–R4–ES–2020–0107
Southern acornshell	FWS–R4–ES–2020–0107
Stirrupshell	FWS–R4–ES–2020–0107
Upland combshell	FWS–R4–ES–2020–0107
Green blossom (pearly mussel)	FWS–R4–ES–2020–0108
Tubercled blossom (pearly mussel)	FWS–R4–ES–2020–0108
Turgid blossom (pearly mussel)	FWS–R4–ES–2020–0108
Yellow blossom (pearly mussel)	FWS–R4–ES–2020–0108
Ivory-billed woodpecker	FWS–R4–ES–2020–0109
Bachman's warbler	FWS–R4–ES–2020–0110

Supporting information used to prepare the determinations, as well as comments and materials we receive, will be available for public inspection on *http://www.regulations.gov,* or by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species should remain listed as endangered or threatened, or reclassify from threatened to endangered, instead of being delisted because new evidence indicates that it is not extinct.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the applicable date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270)

and our August 22, 2016, Director's Memorandum ''Peer Review Process,'' we will seek, or have sought, the expert opinion of at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule for each species or group of species. In certain cases, species will be grouped together for peer review based on similarities in biology or geographic occurrences. We will send copies of the five-year species status reviews to the peer reviewers immediately following publication in the **Federal Register**. We will ensure that the opinions of peer reviewers are objective and unbiased by following the guidelines set forth in the Director's Memo, which updates and clarifies Service policy on peer review (U.S. Fish and Wildlife Service 2016). The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, our final decisions may differ from this proposal.

Background

Section 4(c) of the Act requires the Service to maintain and publish Lists of Endangered and Threatened Species. This includes delisting species that are extinct or presumed extinct based on the best scientific and commercial data available. The Service can decide to delist a species presumed extinct on its own initiative, as a result of a 5-year review under section 4(c)(2) of the Act, or because we are petitioned to delist due to extinction. Congress made clear that an integral part of the statutory framework is for the Service to make delisting decisions when appropriate and revise the Lists accordingly. For example, section 4(c)(1) of the Act requires the Service to revise the Lists to reflect recent determinations, designations, and revisions. Similarly, section 4(c)(2) requires the Service to review the lists at least every 5 years; determine, based on those reviews, whether any species should be delisted or reclassified; and, if so, apply the same standards and procedures as for listings under sections 4(a) and 4(b). Finally, to make a finding that a particular action is warranted but precluded, the Service must make two determinations: (1) That the immediate proposal and timely promulgation of a final regulation is precluded by pending proposals to determine whether any species is endangered or threatened; and (2) that expeditious progress is being made to add qualified species to either of the Lists and to remove species from the Lists (16 U.S.C. 1533(b)(3)(B)(iii)). Delisting species that will not benefit from the Act's protections because they are extinct allows us to allocate resources responsibly for on-the-ground conservation efforts, recovery planning, 5-year reviews, and other protections for species that are extant and will therefore benefit from those actions.

Regulatory and Analytical Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Lists. Our regulations (50 CFR 424.11(e)) state that the Secretary shall delist a species if the Secretary finds that, after conducting a status review based on the best scientific and commercial data available:

(1) The species is extinct;

(2) The species does not meet the definition of an endangered species or a threatened species. In making such a determination, we consider the same five factors and apply the same standards set forth as for listing and reclassification; or

(3) The listed entity does not meet the statutory definition of a species.

In this proposed rule, we use the commonly understood biological definition of ''extinction'' as meaning that no living individuals of the species remain in existence. A determination of extinction will be informed by the best available information to indicate that no individuals of the species remain alive, either in the wild or captivity. This is in contrast to ''functional extinction,'' where individuals of the species remain alive but the species is no longer viable and/or no reproduction will occur (*e.g.,* any remaining females cannot reproduce, only males remain, etc.).

In our analyses, we attempted to minimize the possibility of either (1) prematurely determining that a species is extinct where individuals exist but remain undetected, or (2) assuming the species is extant when extinction has already occurred. Our determinations of whether the best available information indicates that a species is extinct included an analysis of the following criteria: Detectability of the species, adequacy of survey efforts, and time since last detection. All three criteria require taking into account applicable aspects of species' life history. Other lines of evidence may also support the determination and be included in our analysis.

In conducting our analyses of whether these species are extinct, we considered and thoroughly evaluated the best scientific and commercial data available. We reviewed the information available in our files, and other available published and unpublished information. These evaluations may include information from recognized experts; Federal, State, and Tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The 5-year reviews of these species contain more detailed biological information on each species. This supporting information can be found on the internet at *http://www.regulations.gov* under the appropriate docket number (see table under *Public Comments,* above). The following information summarizes the analyses for each of the species proposed for delisting by this rule.

Summary of Biological Status and Threats

Mammals

Little Mariana Fruit Bat (Pteropus tokudae)

I. Background

The little Mariana fruit bat (*Pteropus tokudae*) was listed as endangered on August 27, 1984 (49 FR 33881), and was included in the Recovery Plan for Mariana Fruit Bat (*Pteropus mariannus,* or fanihi in the Chamorro language) and the Little Mariana Fruit Bat (USFWS 1990). Last observed in 1968, the little Mariana fruit bat was ''among the most critically endangered species of wildlife under U.S. jurisdiction,'' as noted in the 1984 final listing rule (49 FR 33881, August 27, 1984, p. 49 FR 33882), which cited hunting and loss of habitat as the primary factors contributing to its rarity. Three 5-year status reviews have been completed; the 2009 (initiated on March 8, 2007; see 72 FR 10547) and 2015 (initiated on February 5, 2013; see 78 FR 8185) reviews did not recommend a change in status (USFWS 2009b, 2015). The 5-year status review completed in 2019 (initiated on May 7, 2018; see 83 FR 20088) recommended delisting due to extinction likely resulting from habitat loss, poaching, and predation by the brown tree snake (*Boiga irregularis*). This recommendation was based on a reassessment of all available information for the species, coupled with an evaluation of population trends and threats affecting the larger, extant Mariana fruit bat, which likely shares similar behavioral and biological traits and provides important context for the historical decline of the little Mariana fruit bat. (USFWS 2019).

The little Mariana fruit bat was first described from a male type specimen collected in August 1931 (Tate 1934, p. 1). Its original scientific name, *Pteropus tokudae,* remains current. Only three confirmed observations of the little Mariana fruit bat existed in the

literature based on collections of three specimens: Two males in 1931 (Tate 1934, p. 3), and a female in 1968 (Perez 1972, p. 146), all on the island of Guam where it was presumably endemic. Despite the dearth of confirmed collections and observations, two relatively recent studies have confirmed the taxonomic validity of the little Mariana fruit bat, via morphology (Buden *et al.* 2013, entire) and genetics (Almeida *et al.* 2014, entire). A study of the physical morphology of several Micronesia *Pteropus* spp., including all three known little Mariana fruit bat specimens, concluded that the species was a distinct taxon (Buden *et al.* 2013, entire). Subsequently, genetic analysis of skin samples from 50 of the 63 described *Pteropus* species supported the Mariana little fruit bat's taxonomic distinctness (Almeida *et al.* 2014, entire).

The little Mariana fruit bat belonged to a primarily tropical group of bats in the Megachiroptera suborder characterized by relatively large size, frugivorous diet (fruit-eating), and lack of echolocation. Its genus, *Pteropus,* comprises 63 species, including many coastal species endemic to Pacific islands (Almeida *et al.* 2014, pp. 83–84). Given the homogeneity of life-history traits within the *Pteropus* genus, we expect that the little Mariana fruit bat exhibited similar behavior and life history to other members of the genus, including group roosting and foraging within forest habitat, lengthy care of few offspring, and slow population growth (USFWS 1990, p. 7; Wiles 1987, p. 154). Lifespan for the little Mariana fruit bat is unknown, but the Mariana fruit bat may survive for 30 years in captivity (USFWS 2020, unpaginated) and other bats within the genus live between 14 and 40 years. In the most recent 5-year review completed in 2019, we drew upon our knowledge of the larger and still extant Mariana fruit bat's biology to extrapolate a likely timeline and explanation for the little Mariana fruit bat's rarity, decline, and eventual extinction.

The earliest available scientific literature indicates that the little Mariana fruit bat was always likely rare, as suggested by written accounts of the species first recorded in the early 1900s (Baker 1948, p. 54; Perez 1972, pp. 145–146; Wiles 1987, p 154). In addition to possibly having been inherently rare, as suggested by the literature, a concurrent decline in the little Mariana fruit bat population likely occurred during the well-documented decrease in Mariana fruit bat abundance on Guam in the 1900s. In 1920, it was ''not an uncommon sight'' to see fruit bats flying over the forest during the daytime in Guam (Wiles 1987, p. 150). Just 10 years later (when the first two little Mariana fruit bat specimens were collected), fruit bats were uncommon on the island (Wiles 1987, p. 150), and were found mostly in northern Guam; introduced firearms may have been a contributing factor in their decline because they increased the efficiency of hunting (Wiles 1987, p. 150).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The little Mariana fruit bat was much smaller than the related Mariana fruit bat (Tate 1934, p. 2; Perez 1972, p. 146; Buden *et al.* 2013, pp. 109–110). Adult bats measured approximately 5.5 to 5.9 inches (in) (14 to 15.1 centimeters (cm)) in head-body length, with a wingspan of approximately 25.6 to 27.9 in (650 to 709 mm). The adults weighed approximately 5.36 ounces (152 grams). Although primarily dark brown in color, the little Mariana fruit bat showed some variation on the neck and head which could appear pale gold and grayish or yellowish-brown in color. Because of their small size (O'Shea and Bogan 2003, pp. 49, 254; USFWS 2009, p. 55), it is possible that adult little Mariana fruit bats were historically confused with juvenile fruit bats. Therefore, historical accounts of the species may have been underrepresented (Perez 1972, p. 143; Wiles 1987, p. 15).

The challenges of surveying for the Mariana fruit bat and most *Pteropus* spp. (including in theory, the little Mariana fruit bat) are numerous. Mariana fruit bats sleep during the day in canopy emergent trees, either solitarily or within colonial aggregations that may occur across several acres (O'Shea and Bogan 2003, p. 254; Utzurrum *et al.* 2003, p. 49; USFWS 2009, p. 269). The tropical islands where many tropical fruit bats (*Pteropus* spp.) are located have widely diverse and steeply topographical habitat, making surveys difficult. Additionally, most *Pteropus* spp. choose roost sites (both colonial and individual) that occur in locations difficult for people to reach, such as adjacent to steep cliffsides in remote forest areas (Wilson and Graham 1992, p. 65). The selection of roost sites in these areas is likely both a result of their evolved biology (for example to take advantage of updrafts for flight (Wilson and Graham 1992, p. 4)) and learned behavior to avoid poachers (USFWS 2009, pp. 24–25; Mildenstein and Johnson 2017, p. 36). To avoid triggering this avoidance behavior, surveyors must generally keep a distance of 164 feet (50 meters) and survey only downwind of roost sites (Mildenstein and Boland 2010, pp. 12–13; Mildenstein and Johnson 2017, pp. 55, 86). Additionally, *Pteropus* spp. typically sleep during the day and do not vocalize, and flying individuals may be easily counted twice due to their foraging patterns (Utuzurrum *et al.* 2003, p. 54).

Survey Effort

Historically, surveys to estimate colonial fruit bat numbers have generally involved two relatively simple and inexpensive methods, direct counts and station counts (or departure, or exit counts) (Utuzurrum *et al.* 2003, pp. 53–54). With direct counts, surveyors attempt to determine the number of bats in a roosting colony (or individual bats) at a single site during the day. Direct counts usually involve use of binoculars or a spotting scope, depending on the observation distance from the colony or individuals (Kunz *et al.* 1996; Eby *et al.* 1999; Garnett *et al.* 1999; Worthington *et al.* 2001 as cited in Mildenstein and Boland 2010, pp. 2–3). Conversely, surveyors conduct exit counts in the late afternoon to early evening when bats begin to depart from the roost site for evening foraging. Exit counts are typically conducted at locations with wide and unimpeded views of either areas known to contain colonies, or forested areas that would likely serve as roost sites for bats. Occasionally, surveyors may conduct both exit and direct counts by boat or by air with a helicopter. More recently, direct and exit count surveys involve use of computers and digital photography to aid the process (Mildenstein and Boland 2010, pp. 2–3).

By 1945, fruit bats were difficult to locate even in the northern half of Guam, where they were largely confined to forested cliff lines along the coasts (Baker 1948, p. 54). During surveys conducted between 1963 and 1968, the Guam Division of Aquatic and Wildlife Resources (DAWR) confirmed that bats were declining across much of Guam and were absent in the south. It was also during these same field studies that the third and last little Mariana fruit bat was collected in northern Guam in 1968 (Baker 1948, p. 146).

Increased survey efforts during the late 1970s and early 1980s reported no confirmed sightings of the little Mariana fruit bat (Wheeler and Aguon 1978, entire; Wheeler 1979, entire; Wiles 1987, entire; Wiles 1987, pp. 153–154). When the little Mariana fruit bat was listed as endangered (49 FR 33881; August 27, 1984), we noted that the species was on the verge of extinction

and had not been verifiably observed after 1968. When we published a joint recovery plan for the little Mariana fruit bat and the Mariana fruit bat in 1990, we considered the little Mariana fruit bat already extinct based upon the available literature (USFWS 1990, p. 7).

During the 1990s, researchers recorded decreasing Mariana fruit bat numbers on Guam and increasing fatalities of immature bats. They hypothesized the decline was due to predation by the brown tree snake (Wiles *et al.* 1995, pp. 33–34, 39–42). With bat abundance continuing to decline in the 2000s, researchers now estimate the island's Mariana fruit bat population currently fluctuates between 15 and 45 individuals (Mildenstein and Johnson 2017, p. 24; USFWS 2017, p. 54). Even if the little Mariana fruit bat persisted at undetectable numbers for some time after its last confirmed collection in 1968, it is highly likely the little Mariana fruit bat experienced the same pattern of decline that we are now seeing in the Mariana fruit bat.

Time Since Last Detection

As stated above, the little Mariana fruit bat was last collected in northern Guam in 1968 (Baker 1948, p. 146). Intensive survey efforts conducted by Guam DAWR and other researchers in subsequent decades have failed to locate the species. Decades of monthly (and, later, annual) surveys for the related Mariana fruit bat by qualified personnel in northern Guam have failed to detect the little Mariana fruit bat (Wheeler and Aguon 1978, entire; Wheeler 1979, entire; Wiles 1987, entire; Wiles 1987, pp. 153–154; USFWS 1990, p. 7).

III. Analysis

Like the majority of bat species in the genus *Pteropus,* specific biological traits likely exacerbated the little Mariana fruit bat's susceptibility to human activities and natural events (Wilson and Graham 1992, pp. 1–8). For example, low fecundity in the genus due to late reproductive age and small broods (1 to 2 young annually) inhibits population rebound from catastrophic events such as typhoons, and from slow progression of habitat loss and hunting pressure that we know occurred over time. The tendency of *Pteropus* bats to roost together in sizeable groups or colonies in large trees rising above the surrounding canopy makes them easily detected by hunters (Wilson and Graham 1992, p. 4). Additionally, *Pteropus* bats show a strong tendency for roost site fidelity, often returning to the same roost tree year after year to raise their young (Wilson and Graham 1992, p. 4; Mildenstein and Johnson 2017, pp. 54, 68). This behavior likely allowed hunters and (later) poachers to easily locate and kill the little Mariana fruit bat and, with the introduction of firearms, kill them more efficiently (Wiles 1987, pp. 151, 154; USFWS 2009, pp. 24–25; Mildenstein and Johnston 2017, pp. 41–42). The vulnerability of the entire genus *Pteropus* is evidenced by the fact that 6 of the 62 species in this genus have become extinct in the last 150 years (including the little Mariana fruit bat). The International Union for Conservation of Nature (IUCN) categorizes an additional 37 species in this genus at risk of extinction (Almeida *et al.* 2014, p. 84).

In discussing survey results for the Mariana fruit bat in the late 1980s, experts wrote that the level of illegal poaching of bats on Guam remained extremely high, despite the establishment of several legal measures to protect the species beginning in 1966 (Wiles 1987, p. 154). They also wrote about the effects of brown tree snake predation on various fruit bats species (Savidge, 1987, entire; Wiles 1987, pp. 155–156). To date, there is only one documented instance of brown tree snake actually preying on the Mariana fruit bat; in that case, three young bats were found within the stomach of a snake (Wiles 1987, p. 155). However, immature *Pteropus* pups are particularly vulnerable to predators between approximately 3 weeks and 3 months of age. During this timeframe, the mother bats stop taking their young with them while they forage in the evenings, leaving them alone to wait at their roost tree (Wiles 1987, p. 155).

Only three specimens of little Mariana fruit bat have ever been collected, all on the island of Guam, and no other confirmed captures or observations of this species exist. Based on the earliest records, the species was already rare in the early 1900s. Therefore, since its discovery, the little Mariana fruit bat likely experienced greater susceptibility to a variety of factors because of its small population size. Predation by the brown tree snake, alteration and loss of habitat, increased hunting pressure, and possibly competition with the related Mariana fruit bat for the same resources under the increasingly challenging conditions contributed to the species' decreased ability to persist.

It is highly likely the brown tree snake, the primary threat thought to be the driver of multiple bird and reptile species extirpations and extinctions on Guam, has been present throughout the little Mariana fruit bat's range for at least the last half-century, and within the last northern refuge in northern Guam since at least the 1980s. Because of its life history and the challenges presented by its small population size, we conclude that the little Mariana fruit bat was extremely susceptible to predation by the brown tree snake.

IV. Conclusion

At the time of listing in 1984, hunting and loss of habitat were considered the primary threats to the little Mariana fruit bat. The best available information now indicates that the little Mariana fruit bat is extinct. The species appears to have been vulnerable to pervasive, rangewide threats including habitat loss, poaching, and predation by the brown tree snake. Since its last detection in 1968, qualified observers have conducted surveys and searches throughout the range of the little Mariana fruit bat but have not detected the species. Available information indicates that the species was not able to persist in the face of anthropogenic and environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Birds

Bachman's Warbler (Vermivora bachmanii)

I. Background

The Bachman's warbler (*Vermivora bachmanii*) was listed on March 11, 1967 (32 FR 4001), as endangered under the Endangered Species Preservation Act of 1966, as a result of the loss of breeding and wintering habitat. Two 5-year reviews were completed for the species on February 9, 2007 (initiated on July 26, 2005; see 70 FR 43171), and May 6, 2015 (initiated on September 23, 2014; see 79 FR 56821). Both 5-year reviews recommended that if the species was not detected within the following 5 years, it would be appropriate to delist due to extinction.

The Bachman's warbler was first named in 1833 as *Sylvia bachmanii* based on a bird observed in a swamp near Charleston, South Carolina (AOU 1983, pp. 601–602). The Bachman's warbler was among the smallest warblers with a total length of 11.0 to 11.5 centimeters (cm) (4.3 to 4.5 inches (in)). The species was found in the southeastern portions of the United States from the south Atlantic and Gulf Coastal Plains, extending inland in floodplains of major rivers (eastern Texas, Louisiana, Arkansas, bootheel of Missouri, Alabama, Georgia, North and South Carolinas, Virginia, and flyovers in Florida). However, breeding was documented only in northeast Arkansas, southeast Missouri, southwest Kentucky, central Alabama, and

southeast South Carolina. Bachman's warbler was a neotropical migrant; historically, the bulk of the species' population left the North American mainland each fall for Cuba and Isle of Pines (Dingle 1953, pp. 67–68, 72–73).

Available information indicates that migratory habitat preferences differed from winter and breeding habitat preferences in that the bird used or tolerated a wider range of conditions and vegetative associations during migration. Historical records indicate the Bachman's warbler typically nested in low, wet, forested areas containing variable amounts of water, but usually with some permanent water. While it is not definitively known, it is thought that they preferred small edges created by fire or storms with a dense understory of the cane species *Arundinaria gigantea* and palmettos. Nests were typically found in shrubs low to the ground from late March through June, and average known clutch size was 4.2 +/− 0.7 (with a range of 3 to 5) (Hamel 2018, pp. 14–15). During the winter in Cuba, it was found in a wider variety of habitats across the island including forests, ranging from dry, semi-deciduous forests to wetlands, and even in forested urban spaces (Hamel 1995, p. 5). Life expectancy is unknown, but other warbler species live for 3 to 11 years (Klimkiewicz *et al.* 1983, pp. 292–293).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The Bachman's warbler was one of the smallest warblers with a total length of 11.0 to 11.5 cm. The bill was slender with a slight downward curve in both sexes and was a unique feature within the genus. The male was olive-green above with yellow forehead, lores, eye-ring, chin, and underparts; a black throat and crown; and dusky wings and tail. Males also had a yellow shoulder patch and bright rump. Generally, while similar, plumage of females was paler. Females lacked any black coloration and had olive green upperparts with yellow forehead and underparts. The eye-ring was whiter than in the males, and the crown was grayish. The dark patch on the throat was usually missing and the eye-ring was pale. Females had a buffy or bright yellowish forehead and a gray crown with no black; a whitish or white crissum; and less pronounced white spots on the tail (Hamel and Gauthreaux 1982, pp. 235–239; Hamel 1995, p. 2). Immature males resembled females. Males were easy to distinguish from other warblers. However, the drab coloration of the females and immature birds made positive identification difficult (Hamel and Gauthreaux 1982, p. 235). Additionally, females were much more difficult to identify because variability in plumage was greater. Immature females were also most likely to be confused with other similarly drab warblers. The song of the Bachman's warbler was a zeep or buzzy zip given by both sexes (Hamel 2020, Sounds and Vocal Behavior). This species may have been difficult to differentiate on call alone, as its call was somewhat reminiscent of the pulsating trill of the northern parula (*Parula americana*) (Curson *et al.* 1994, p. 95), and only two recordings exist from the 1950s (Hamel 2018, p. 32) to guide ornithologists on distinguishing it this way. Despite the fact that it could be mistaken for the northern parula, Bachman's warbler was of high interest to birders, and guides have been published specifically to aid in field identification (Hamel and Gauthreaux 1982, entire). As a result, substantial informal and formal effort has been expended searching for the bird and verifying potential sightings as outlined below (see ''Survey Effort'').

Survey Effort

Although Bachman's warbler was first described in 1833, it remained relatively unnoticed for roughly the next 50 years. Population estimates are qualitative in nature and range from rare to abundant (Service 1999, pp. 4–448). Populations were probably never large and were found in ''some numbers'' between 1890 and 1920, but afterwards populations appeared to be very low (Hamel 2018, pp. 16–18). For instance, several singing males were reported in Missouri and Arkansas in 1897 (Widmann 1897, p. 39), and Bachman's warbler was seen as a migrant along the lower Suwannee River in flocks of several species (Brewster and Chapman 1891, p. 127). The last confirmed nest was documented in 1937 (Curson *et al.* 1994, p. 96). A dramatic decline occurred sometime between the early 1900s and 1940 or 1950. Recognition of this decline resulted in the 1967 listing of the species (32 FR 4001; March 11, 1967) under the Endangered Species Preservation Act of 1966.

Between 1975 and 1979, an exhaustive search was conducted in South Carolina, Missouri, and Arkansas. No Bachman's warblers were located (Hamel 1995, p. 10). The last (though unconfirmed) sighting in Florida was from a single bird observed near Melbourne in 1977. In 1989, an extensive breeding season search was conducted on Tensas National Wildlife Refuge in Louisiana. Six possible Bachman's warbler observations occurred, but could not be documented sufficiently to meet acceptability criteria established for the study (Hamilton 1989, as cited in Service 2015, p. 4).

An experienced birder reported multiple, possible sightings of Bachman's warbler at Congaree National Park, South Carolina, in 2000 and 2001. These included hearing a male and seeing a female. In 2002, the National Park Service partnered with the Service and the Atlantic Coast Joint Venture to investigate these reports. Researchers searched over 3,900 acres of forest during 166 hours of observation in March and April; however, no Bachman's warbler sightings or vocalizations were confirmed. As noted previously, females and immature birds are difficult to positively identify. Males (when seen) are more easily distinguishable from other species. Researchers trying to verify the sightings traced several promising calls back to northern parulas and finally noted that they were confident the species would have been detected had it been present (Congaree National Park 2020, p. 3).

In several parts of the Bachman's warbler's range, relatively recent searches (since 2006) for ivory-billed woodpecker also prompted more activity in appropriate habitat for Bachman's warbler. Although much of the search period for ivory-billed woodpecker is during the winter, the searches usually continue until the end of April, when Bachman's warbler would be expected in the breeding range. Therefore, because Bachman's warbler habitat overlaps ivory-billed woodpecker habitat, the probability that Bachman's warbler would be detected, if present, has recently increased (Service 2015, pp. 5–6). Further, in general, substantial informal effort has been expended searching for Bachman's warbler because of its high interest among birders (Service 2015, p. 5). In spite of these efforts, Bachman's warbler has not been observed in the United States in more than three decades.

In Cuba, the species' historical wintering range, the last ornithologist to see the species noted that the species was observed twice in the 1960s in the Zapata Swamp: One sighting in the area of a modern-day hotel in Laguna del Tesoro and the other one in the Santo Tomas, Zanja de la Cocodrila area. Some later potential observations (*i.e.,* 1988) in the same areas were thought to be a female common yellowthroat (Navarro 2020, pers. comm.). A single bird was reported in Cuba in 1981 at Zapata Swamp (Garrido 1985, p. 997; Hamel 2018, p. 20). However, additional surveys in Cuba by Hamel and Garrido in 1987 through 1989 did not confirm

additional birds (Navarro 2020, pers. comm.). There have been no sightings or bird surveys in recent years in Cuba, and all claimed sightings of Bachman's warbler from 1988 onwards have been rejected by the ornithological community (Navarro 2020, pers. comm.). Curson *et al.* (1994, p. 96) considers all sightings from 1978 through 1988 in Cuba as unconfirmed.

Time Since Last Detection

After 1962, reports of the Bachman's warbler in the United States have not been officially accepted, documented observations (Chamberlain 2003, p. 5). Researchers have been thorough and cautious in verification of potential sightings, and many of the more recent ones could not be definitively verified. Bachman's warbler records from 1877–2001 in North America are characterized as either relying on physical evidence or on independent expert opinion, or as controversial sightings (Elphick *et al.* 2010, pp. 8, 10). In Cuba, no records have been verified since the 1980s (Navarro 2020, pers. comm.).

Other Considerations Applicable to the Species' Status

At breeding grounds, the loss of habitat from clearing of large tracts of palustrine (*i.e.,* having trees, shrubs, or emergent vegetation) wetland beginning in the 1800s was a major factor in the decline of the Bachman's warbler. Most of the palustrine habitat in the Mississippi Valley (and large proportions in Florida) was historically converted to agriculture or affected by other human activities (Fretwell *et al.* 1996, pp. 8, 10, 124, 246). Often the higher, drier portions of land that the Bachman's warbler required for breeding were the first to be cleared because they were more accessible and least prone to flooding (Hamel 1995, pp. 5, 11; Service 2015, p. 4). During World Wars I and II, many of the remaining large tracts of old growth bottomland forest were cut, and the timber was used to support the war effort (Jackson 2020, Conservation and Management, p. 2). At the wintering grounds of Cuba, extensive loss of primary forest wintering habitat occurred due to the clearing of large areas of the lowlands for sugarcane production (Hamel 2018, p. 24). Hurricanes also may have caused extensive damage to habitat and direct loss of overwintering Bachman's warblers. Five hurricanes occurred between November 1932 and October 1935. Two storms struck western Cuba in October 1933, and the November 1932 hurricane is considered one of the most destructive ever recorded. These hurricanes, occurring when Bachman's warblers would have been present at their wintering grounds in Cuba, may have resulted in large losses of the birds (Hamel 2018, p. 19).

III. Analysis

As early as 1953, Bachman's warbler was reported as one of the rarest songbirds in North America (Dingle 1953, p. 67). The species may have gone extinct in North America by 1967 (Elphick *et al.* 2010, p. 619). Despite extensive efforts to document presence of the species, no new observations of the species have been verified in the United States or Cuba in several decades (Elphick *et al.* 2010, supplement; Navarro 2020, pers. comm.). Given the likely lifespan of the species, it has not been observed in several generations.

IV. Conclusion

As far back as 1977, Bachman's warbler has been described as being on the verge of extinction (Hooper and Hamel 1977, p. 373) and the rarest songbird native to the United States (Service 1999, pp. 4–445). The species has not been seen in the United States or Cuba since the 1980s, despite extensive efforts to locate it and verify potential sightings. Therefore, we conclude that the best available scientific and commercial information indicates that the species is extinct.

Bridled White-eye (Zosterops conspicillatus conspicillatus)

I. Background

The bridled white-eye (*Zosterops conspicillatus conspicillatus,* or Nossa in the Chamorro language), was listed as endangered in 1984 (49 FR 33881; August 27, 1984), and was included in the Recovery Plan for the Native Forest Birds of Guam and Rota of the Commonwealth of the Northern Mariana Islands (USFWS 1990, entire). The species was last observed in 1983, and the 1984 final listing rule for the bridled white-eye noted that the species ''may be the most critically endangered bird under U.S. jurisdiction'' (49 FR 33881, August 27, 1984, p. 49 FR 33883) and cited disease and predation by nonnative predators, including the brown tree snake (*Boiga irregularis*), as the likely factors contributing to its rarity (49 FR 33881, August 27, 1984, p. 49 FR 33884). Three 5-year status reviews were completed for the bridled white-eye; the 2009 (initiated on March 8, 2007; see 72 FR 10547) and 2015 (initiated on March 6, 2012; see 77 FR 13248) reviews did not recommend a change in status (USFWS 2009a, 2015). After reevaluation of all available information, the 5-year status review completed in 2019 (initiated on May 7, 2018; see 83 FR 20088) recommended delisting due to extinction, based on continued lack of detections and the pervasive rangewide threat posed by the brown tree snake (USFWS 2019, p. 10).

At the time of listing, the bridled white-eye on Guam was classified as one subspecies within a complex of bridled white-eye (*Zosterops conspiculatus*) populations found in the Mariana Islands. The most recent taxonomic work (Slikas *et al.* 2000, p. 360) continued to classify the Guam subspecies within the same species as the bridled white-eye populations currently found on Saipan, Tinian, and Aguiguan in the Commonwealth of the Northern Mariana Islands (*Z. c. saypani*) but considered the Rota population (*Z. rotensis;* now separately listed as endangered under the Act) to be a distinct species.

Endemic only to Guam, within the Mariana Islands, the bridled white-eye was a small (0.33 ounce or 9.3 grams), green and yellow, warbler-like forest bird with a characteristic white orbital ring around each eye (Jenkins 1983, p. 48). The available information about the life history of the species is sparse, based on a few early accounts in the literature (Seale 1901, pp. 58–59; Stophet 1946, p. 540; Marshall 1949, p. 219; Baker 1951, pp. 317–318; Jenkins 1983, pp. 48–49). Nonterritorial and often observed in small flocks, the species was a canopy-feeding insectivore that gleaned small insects from the twigs and branches of trees and shrubs (Jenkins 1983, p. 49). Although only minimal information exists about the bridled white-eye's nesting habits and young, observations of nests during several different months suggests the species bred year-round (Marshall 1949, p. 219; Jenkins 1983, p. 49). No information is available regarding longevity of the bridled white-eye, but lifespans in the wild for other white-eyes in the same genus range between 5 and 13 years (Animal Diversity Web 2020; The Animal Aging and Longevity Database 2020; *WorldLifeExpectancy.com 2020*).

The bridled white-eye was reported to be one of the more common Guam bird species between the early 1900s and the 1930s (Jenkins 1983, p. 5). However, reports from the mid- to late-1940s indicated the species had perhaps become restricted to certain areas on Guam (Baker 1951, p. 319; Jenkins 1983, p. 50). By the early- to mid-1970s, the bridled white-eye was found only in the forests in the very northern portion of Guam (Wiles *et al.* 2003, p. 1353). It was considered rare by 1979, causing experts

to conclude that the species was nearing extinction (Jenkins 1983, p. 50).

By 1981, the bridled white-eye was known to inhabit only a single 395-acre (160-hectare) limestone bench known as Pajon Basin in a limestone forest at Ritidian Point, an area that later became the Guam National Wildlife Refuge. Nestled at the base of towering limestone cliffs of about 426 feet (130 meters), the site was bordered by adjoining tracts of forest on three sides, and ocean on the northern side (Wiles *et al.* 2003, p. 1353). Pajon Basin was also the final refuge for many of Guam's native forest bird species and was the last place where 10 of Guam's forest bird species were still observed together in one locality at historical densities (Savidge 1987, p. 661; Wiles *et al.* 2003, p. 1353).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The bridled white-eye has been described as active and occurred in small flocks of 3 to 12 individuals (Jenkins 1983, p. 48). Although apparently not as vocal as its related subspecies on the other Mariana Islands, the bridled white-eye was observed singing and typically vocalized with ''chipping calls'' while flocking, less so during foraging (Jenkins 1983, p. 48). Although perhaps not correctly identified as a ''secretive'' or ''cryptic'' species (Amidon in litt. 2000, pp. 14–15), the detectability of the related Rota bridled white-eye (*Zosterops rotensis*) is greatest during surveys when it is close to the observer, relative to other species of birds that are detected at further distances. While we are unaware of surveys for the bridled white-eye using alternative methodologies specific for rare or secretive bird species, we conclude there is still sufficient evidence of extinction based upon the large body of literature confirming the impacts of the brown tree snake on Guam (see discussion below under ''III. Analysis'').

Survey Effort

Variable circular plot (VCP) studies are surveys conducted at pre-established stations along transects. Surveyor counts all birds seen and heard during an 8-minute count period and estimates the distance from the count station to each bird seen or heard. From this information, an estimate of the number of birds in a surveyed area is determined and the confidence interval for the estimate is derived. During a multi-year VCP study at Pajon Basin consisting of annual surveys between 1981 and 1987, observations of the bridled white-eye drastically declined in just the first 3 years of the study. In 1981, 54 birds were observed, and in 1982, 49 birds were documented, including the last observation of a family group (with a fledging) of the species. One year later, during the 1983 survey, only a single individual bridled white-eye was sighted. Between 1984 and 1987, researchers failed to detect the species within this same 300-acre (121-hectare) site (Beck 1984, pp. 148–149).

Between the mid- and late-1980s, experts had already begun to hypothesize that the bridled white-eye had become extinct (Jenkins 1983, p. 50; Savidge 1987, p. 661). Although human access has become more restricted within portions of Andersen Air Force Base since 1983, the Guam DAWR has, to date, continued annual roadside counts across the island as well as formal transect surveys in northern Guam in areas previously inhabited by the bridled white-eye. The species remains undetected since the last observation in Pajon Basin in 1983 (Wiles 2018, pers. comm.; Quitugua 2018, pers. comm.; Aguon 2018, pers. comm.).

Time Since Last Detection

Researchers failed to observe the species at the Pajon Basin during the annual surveys between 1984 and 1987, and during subsequent intermittent avian surveys in northern Guam in areas where this species would likely occur (Savidge 1987, p. 661; Wiles *et al.* 1995, p. 38; Wiles *et al.* 2003, entire).

III. Analysis

The brown tree snake is estimated to be responsible for the extinction, extirpation, or decline of 2 bat species, 4 reptiles, and 13 of Guam's 22 (59 percent) native bird species, including all of the native forest bird species with the exception of the Micronesian starling (*Aplonis opaca*) (Wiles *et al.* 2003, p. 1358; Rodda and Savidge 2007, p. 307). The most comprehensive study of the decline (Wiles *et al.* 2003, entire) indicated that 22 bird species were severely impacted by the brown tree snake.

The study also found that in areas newly invaded by the snake, observed declines of avian species were greater than or equal to 90 percent and occurred rapidly, with the average duration just 8.9 years. The study also examined traits of the birds that made them more or less susceptible to predation by the brown tree snake, and determined that the ability and tendency to nest and roost in locations where snakes were less common (*e.g.,* cave walls) correlated with greater likelihood of coexistence with the snake. Large clutch size and large body size correlated with a species' greater persistence, although large body size appeared to only delay, but not prevent, extirpation. Measuring a mere 0.33 ounces (9.3 grams), the bridled white-eye was relatively small in size, and its nests were located in areas accessible to brown tree snakes (Baker 1951, pp. 316–317; Jenkins 1983, pp. 49–50).

We used a recent analytical tool that assesses information on threats to infer species extinction based on an evaluation of whether identified threats are sufficiently severe and prolonged to cause local extinction, as well as sufficiently extensive in geographic scope to eliminate all occurrences (Keith *et al.* 2017, p. 320). Applying this analytical approach to the bridled white-eye, we examined years of research and dozens of scientific publications and reports that indicate that the effects of predation by the brown tree snake have been sufficiently severe, prolonged, and extensive in geographic scope to cause widespread range contraction, extirpation, and extinction for several birds and other species. Based on this analysis, we conclude that the bridled white-eye is extinct and brown tree snake predation was the primary causal agent.

IV. Conclusion

At the time of its listing in 1984, disease and predation by nonnative predators, including the brown tree snake, were considered the primary threats to the bridled white-eye. The best available information now indicates that the bridled white-eye is extinct. The species appears to have been vulnerable to the pervasive, rangewide threat of predation from the brown tree snake. Since its last detection in 1983, qualified observers have conducted surveys and searches throughout the range of the bridled white-eye and have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Ivory-Billed Woodpecker (Campephilus principalis)

I. Background

The ivory-billed woodpecker (*Campephilus principalis*) was first described by Mark Catesby in 1731 (Tanner 1942, p. xv), under a different taxonomic nomenclature. It was the

largest woodpecker in the United States and the second largest in North America with an overall length of approximately 48–51 centimeters (cm) (18–20 inches), an estimated wingspan of 76–80 cm (29–31 inches), and a weight of 454–567 grams (g) (16–20 ounces); however, data from live birds are lacking, so these estimates were based on observations by ornithologists from the late 19th century who collected specimens (Service 2010, pp. 1–2).

The ivory-billed woodpecker was listed as endangered throughout its range on March 11, 1967 (32 FR 4001) under the Endangered Species Preservation Act of 1966. Although no threats were identified at the time of listing, land clearing and timber harvesting were known at the time as threats acting on the species. A status review was announced on April 10, 1985 (50 FR 14123) to determine if the species was extinct and should therefore be proposed for delisting. We did not receive any confirmed reports of live birds as a result of that review. In 1986, we funded a large-scale survey that included coverage of potential sites throughout the species' historical range (Jackson 1989, p. 74; Jackson 2006, p. 1–2, USFWS 2010, p. 69). The study also included soliciting requests for new sightings and investigating those reports for validity, as well as researching historical sources (Jackson 1989, p. 74). No conclusive evidence of ivory-billed woodpeckers was obtained during that study.

Another status review was announced on November 6, 1991 (56 FR 56882) for all species (foreign and domestic listings) listed before 1991. In this review, the status of many species was simultaneously evaluated with no in-depth assessment of the five factors or threats as they pertain to the individual species. The document stated that the Service was seeking any new or additional information reflecting the necessity of a change in the status of the species under review. The document indicated that if significant data were available warranting a change in a species' classification, the Service would propose a rule to modify the species' status. No change in the bird's listing classification was found to be warranted. Each year, the Service reviews and updates listed species information for inclusion in the required Recovery Report to Congress. While considerable effort was placed on confirming reported sightings after 2004 (details provided below), no further sightings occurred. By 2013, the ornithological community determined that these sightings could not be confirmed. Since 2013, our annual recovery data call included status recommendations such as ''presumed extinct'' for the ivory-billed woodpecker.

A 5-year review was most recently announced on May 7, 2018 (83 FR 20092), with a 60-day public comment period ending July 6, 2018. During the public comment period, the Service received and considered four public comments describing reported, but not verifiable, encounters as well as indications that the inability to conclusively document existence does not mean that the species is extinct (Trahan 2020, pers. comm.). The Service also reviewed a variety of additional resources, including published and unpublished scientific information provided by other Service offices, State wildlife agencies, stakeholders, and other partners. Specific sources included the final rule listing this species under the Act (32 FR 4001; March 11, 1967); the recovery plan (Service 2010, entire); peer-reviewed scientific publications; unpublished field observations by Federal, State, and other experienced biologists; unpublished studies and survey reports; and notes and communications from other qualified individuals. The 5-year review was also sent to four independent peer reviewers; one responded with comments. This 5-year review was finalized on June 3, 2019, and recommended that the ivory-billed woodpecker be delisted due to extinction (USFWS 2019, entire).

Much of what we know about the ivory-billed woodpecker comes from research in Louisiana during the late 1930s (Service 2010, pp. xv, vii, 10–22, 67). Suitable habitat for the ivory-billed woodpecker is thought to be extensive forested areas with old-growth characteristics and a naturally high volume of dead and dying wood, particularly in virgin bottomland hardwoods that may sustain the species between disturbance events (*e.g.,* fires, storms, or other events expected to kill or stress trees) (Tanner 1942, pp. 46–47, 52). The home range for the ivory-billed woodpecker is thought to have been fairly large due to their ability to fly long distances, up to at least several kilometers a day between favored roost sites and feeding areas. The estimated ivory-billed woodpecker density historically ranged from one breeding pair per 6.25 square miles to one breeding pair per 17 square miles (Tanner 1942, p. 32).

Breeding was thought to occur between January and April (Tanner 1942, pp. 95–96). Clutch size reportedly ranged from 1 to 5 eggs with an estimated incubation period of approximately 20 days (Service 2010, p. 11). Both sexes of ivory-billed woodpecker incubated the eggs as well as fed the young for a period of about 5 weeks until the young fledged (Tanner 1942, pp. 101, 104). The young may have been fed by the parents for an additional 2 months and roosted near and foraged with the parents into the next breeding season. Dead or dying portions of live trees, and sometimes dead trees, may have been excavated for nest cavities. These cavities ranged from 4.6 meters (m) (15.1 feet (ft)) to over 21 m (69 ft) up a nest tree, although rarely below 9 m (29.5 ft) from a tree's base (Service 2010, p. 11). Ivory-billed woodpeckers not only used nest cavities but excavated roost cavities as well, which are similar in appearance to nest cavities. Pairs or group members were found to roost in trees near each other, and they also were reported to leave the roost after sunrise (Tanner 1942, pp. 57–59). The roosting area is known to have been the center of activity for ivory-billed woodpeckers; however, insect abundance (*i.e.,* food availability) was thought to be important to distribution as well (Tanner 1942, pp. 33–36, 46, 52). Although it is not known for certain, lifespan for the species was estimated to be in excess of 10 years (USFWS 2020, p. 24).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The ivory-billed woodpecker had a black and white plumage with a white chisel-tipped beak, yellow eyes, and a pointed crest. It was sexually dimorphic, with the sexes exhibiting different characteristics (*i.e.,* sizes, coloring, etc.). Females had a solid black crest, and males were red from the nape to the top of the crest with an outline of black on the front of the crest (Service 2010, p. 1). This large woodpecker produced distinctive sounds and had distinctive markings (*e.g.,* large white patch on the wing that can be seen from long distances (Tanner 1942, p. 1)), indicating a certain degree of detectability during surveys, if present.

Survey Effort

The last commonly agreed-upon sighting of the species was on the Singer Tract in the Tensas River region of northeast Louisiana in April of 1944 (Service 2019, p. 9). Since this sighting, the most compelling evidence of the existence of the ivory-billed woodpecker was in 2004 in Arkansas (Fitzpatrick *et al.* 2005, pp. 1460–1462). From 2004 to 2005, within the same area of Bayou DeView, located in the

Cache River National Wildlife Refuge (NWR) in Arkansas, observers reported sightings, audio recordings, and a video interpreted to be an ivory-billed woodpecker (Service 2010, p. 13). The original 2004 encounter as well as the other reports and video from Arkansas spurred an extensive search effort in the area that was led by the Cornell Laboratory of Ornithology and the Arkansas Nature Conservancy beginning in 2005. Multiple approaches were used, including visual methods, aural methods, and playback methods (alone and in combination), as well as helicopter surveys. However, after completing analysis of detection probabilities associated with all of the methods, researchers noted few, if any, ivory-billed woodpeckers could have remained undetected in the Big Woods of Arkansas during the period from 2005 to 2009 (Rohrbaugh and Lammertink 2016, p. 40). Further, although the bird in the video was first interpreted as an ivory-billed woodpecker, there is dispute among the ornithological community as to whether it was an actual ivory-billed woodpecker or instead a pileated woodpecker (*Dryocopus pileatus*). No conclusive videos gathered since then that confirm the persistence of the ivory-billed woodpecker. After additional extensive analysis of the recordings, it was determined that these recordings do not constitute evidence of the presence of ivory-billed woodpeckers (Charif *et al.* 2005, p. 1489; Fitzpatrick *et al.* 2005, p. 1462; Jackson 2006, p. 3).

Since the reported ivory-billed woodpecker in 2004/2005 at the Cache River NWR, a survey design was developed and implemented during search efforts throughout the species' historical range. Many State, Federal, and private partners (*e.g.,* State wildlife agencies, the Service, and the Cornell Laboratory of Ornithology) collaborated over a 5-year period to conduct extensive searches for evidence of the species' presence within the historical range; however, no individuals were reliably located, and no conclusive evidence confirmed the species' persistence (Service 2010, pp. V, VII, 2–9, 75–89). Since the 5-year survey effort was completed, other survey efforts based on sightings and vocalizations reported by wildlife professionals and other individuals have continued throughout the range through present day. These efforts include:

- *2005–2013:* Pearl River swamp, Louisiana and Choctawhatchee River swamp, Florida—Approximately 1,500 hours were spent surveying these two swamps with a kayak and video cameras. Three video clips were produced from both areas; however, the blurred images are inconclusive as to whether they are ivory-billed woodpeckers or not (Collins 2017, entire; Donahue 2017, p. 2).
- *2007–2011:* 30 additional areas in the southeastern United States (Pascagoula Basin of Mississippi, Mobile Basin of Alabama, Congaree and Coastal Basins of South Carolina, Apalachicola Basin of north Florida, and Everglades/Big Cypress Complex of south Florida) were surveyed with no presence of ivory-billed woodpeckers found (Lammertink and Rohrbaugh 2016, p. 7).
- *2011:* White River NWR, Arkansas—Searches were completed a year and a half after a tornado; no evidence of ivory-billed woodpecker presence was observed, further adding to negative outcome of the 2005–2009 search efforts in this NWR (Lammertink and Rohrbaugh 2016, p. 7).
- *2011:* Avoyelles Parish, Louisiana—Survey on private property and Pomme de Terre Wildlife Management Area (WMA). No observations of ivory-billed woodpeckers were made (Lammertink and Rohrbaugh 2016, p. 7).
- *2011:* Lee River State Natural Area, South Carolina—No evidence of ivory-billed woodpecker presence was found during surveys (Lammertink and Rohrbaugh 2016, p. 7).
- *2009–present:* Louisiana—A search group, Project Coyote, was founded to search for ivory-billed woodpeckers in Louisiana; no evidence has been offered that constitutes undeniable confirmation that the species persists (Michaels 2018, p. 79).
- *2016:* Cuba—An expedition to Cuba was initiated in search of the ivory-billed woodpecker; no presence found (McClelland 2016, pp. 13–15).

Although there have been many sightings reported over the years since the last unrefuted sighting in 1944, there is much debate over the validity of these reports. Furthermore, there is no objective evidence (*e.g.,* clear photographs, feathers of demonstrated recent origin, specimens, etc.) of the continued existence of the species.

Additionally, researchers analyzed the temporal pattern of the collection dates of museum specimens from 1853 to 1932 throughout the historical range to estimate the probability of the persistence of the species into the 21st century, as well as the probability that the species would be found at survey sites with continued efforts. The probability of persistence in a 2011 analysis was less than 0.000064, and this analysis estimated the probable extinction date to be between 1960 and 1980 (Gotelli *et al.* 2011, entire). While differing in assumptions, treatment of data, and statistical methods used, other analyses had qualitatively similar conclusions (*e.g.,* Roberts *et al.* 2009, entire; Solow *et al.* 2011, entire).

Time Since Last Detection

The last unrefuted sighting of the ivory-billed woodpecker occurred in April 1944 on the Singer Tract in the Tensas River region of northeast Louisiana (Service 2015, p. 9).

III. Analysis

The decline of mature forested habitat with a high percentage of recently dead or dying trees and widespread collection of the species likely led to the extirpation of the population sometime after the 1940s. Although there have been potential sightings reported over the years since the last agreed-upon sighting in 1944, there is much debate over the validity of these reports. Furthermore, there is no objective evidence (*e.g.,* clear photographs, feathers of demonstrated recent origin, specimens, etc.) of the continued existence of the species despite extensive searches. Given the likely lifespan of the species, this means it has not been indisputably observed in more than seven generations.

IV. Conclusion

The ivory-billed woodpecker has not been definitively sighted since 1944, despite decades of extensive survey effort. The loss of mature forest habitat and widespread collection of the species likely led to its extirpation in the 1940s or soon thereafter. Therefore, we conclude that the best available scientific and commercial information indicates that the species is extinct.

Kauai akialoa (Akialoa stejnegeri)

I. Background

Kauai akialoa (*Akialoa stejnegeri;* listed as *Hemignathus stejnegeri*), a Hawaiian honeycreeper, was listed as endangered on March 11, 1967 (32 FR 4001). It was included in the Kauai Forest Birds Recovery Plan (USFWS 1983), and the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, p. 2–86). At the time of listing, we considered Kauai akialoa to have very low population numbers and to be threatened by habitat loss, avian disease, and predation by rats (*Rattus* spp.). The last confirmed observation of the species was in 1965, although there was an unconfirmed sighting in 1969 (Reynolds and Snetsinger 2001, p. 142). Two 5-year status reviews have been completed, in 2009 (initiated on July 6, 2005; see 70 FR 38972) and 2018 (initiated on February 13, 2015; see 80

FR 8100). The 2009 review did not recommend a change in status, though there was some information indicating the species was already extinct. The 5-year status review completed in 2019 recommended delisting due to extinction based on consideration of additional information about the biological status of the species, included in the discussion below (USFWS 2019, pp. 5, 10).

The life history of Kauai akialoa is poorly known and based mainly on observations from the end of the 19th century (USFWS 2006, p. 2–86). There is no information on the lifespan of the Kauai akialoa nor its threats when it was extant. The species was widespread on Kauai and occupied all forest types above 656 feet (200 meters) elevation (Perkins 1903, pp. 369, 422, 426). Its historical range included nearly all Kauai forests visited by naturalists at the end of the 19th century. After a gap of many decades, the species was seen again in the 1960s, when one specimen was collected (Richardson and Bowles 1964, p. 30). It has not been seen since, despite efforts by ornithologists (Conant *et al.* 1998, p. 15) and birders, and intensive survey efforts by wildlife biologists spanning 1968 to 2018 (USFWS 1983, p. 2; Hawaii Department of Land and Natural Resources unpubl. data; Reynolds and Snetsinger 2001, entire; Crampton *et al.* 2017 entire; Crampton 2018, pers. comm.).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The Kauai akialoa was a large (6.7 to 7.5 inches, or 17 to 19 centimeters, total length), short-tailed Hawaiian honeycreeper with a very long, thin, curved bill, the longest bill of any historically known Hawaiian passerine. The plumage of both sexes was olive-green; males were more brightly colored, were slightly larger, and had a somewhat longer bill (USFWS 2006, p. 2–86). The Kauai akialoa's relatively large size and distinctive bill suggest that if it were extant, it would be detectable by sight and recognized.

Survey Effort

A comprehensive survey of Hawaiian forest birds was initiated in the 1970s using the VCP method (Scott *et al.* 1986, entire). VCP surveys in Hawaii are conducted at pre-established stations along transects. The surveyor counts all birds seen and heard during an 8-minute count period and estimates the distance from the count station to each bird seen or heard. From this information, an estimate of the number of birds in area surveyed is determined and the confidence interval for this estimate derived. VCP surveys have been the primary method used to count birds in Hawaii; however, it is not appropriate for all species and provides poor estimates for extremely rare birds (Camp *et al.* 2009, p. 92). In recognition of this problem, the Rare Bird Search (RBS) was undertaken from 1994 to 1996, to update the status and distribution of 13 ''missing'' Hawaiian forest birds (Reynolds and Snetsinger 2001, pp. 134–137). The RBS was designed to improve efficiency in the search for extremely rare species, using the method of continuous observation during 20- to 30-minute timed searches in areas where target species were known to have occurred historically, in conjunction with audio playback of species vocalizations (when available). Several recent surveys and searches, including the RBS, have been unsuccessful in detecting Kauai akialoa despite intensive survey efforts by wildlife biologists from 1968 to 1973, and in 1981, 1989, 1993, 1994, 2000, 2005, and 2011 to 2018 (Hawaii Department of Land and Natural Resources unpubl. data; Reynolds and Snetsinger 2001, entire; Crampton *et al.* 2017, entire; Crampton 2018 pers. comm.). An unconfirmed 1969 report may have been the last sighting of Kauai akialoa (Conant *et al.* 1998, p. 15). Kauai akialoa has been presumed likely extinct for some time (Reynolds and Snetsinger 2001, p. 142).

In addition, extensive time has been spent by qualified observers in the historical range of the Kauai akialoa searching for the small Kauai thrush (*Myadestes palmeri*), akekee (*Loxops caeruleirostris*), and Kauai creeper (*Oreomystis bairdi*). Hawaii Forest Bird Surveys (HFBS) were conducted in 1981, 1989, 1994, 2000, 2005, 2007, 2008, 2012, and 2018 (Paxton *et al.* 2016, entire). The Kauai Forest Bird Recovery Project (KFBRP) conducted occupancy surveys for the small Kauai thrush in Kokee State Park, Hono O NaPali Natural Area Reserve, Na Pali Kona Forest Reserve, and Alakai Wilderness Preserve, from 2011 to 2013 (Crampton *et al.* 2017, entire), and spent over 1,500 person-hours per year from 2015 to 2018 searching for Kauai creeper and akekee nests. During the HFBS in 2012 and 2018, occupancy surveys and nest searches did not yield any new detections of Kauai akialoa. The KFBRP conducted mist-netting in various locations within the historical range for Kauai akialoa from 2006 through 2009, and from 2011 through 2018, and no Kauai akialoa were caught or encountered (Crampton 2018, pers. comm.).

Time Since Last Detection

Another approach used to determine whether extremely rare species are likely extinct or potentially still extant is to calculate the probability of a species' extinction based on time (years) since the species was last observed (Elphick *et al.* 2010, p. 620). This approach, when applied to extremely rare species, has the drawback that an incorrect assignment of species extinction may occur due to inadequate survey effort and/or insufficient time by qualified observers spent in the area where the species could still potentially exist. Using 1969 as the last credible sighting of Kauai akialoa, the authors' estimated date for the species' extinction is 1973, with 95 percent confidence that the species was extinct by 1984.

III. Analysis

The various bird species in the subfamily Drepanidinae (also known as the Hawaiian honeycreepers), which includes Kauai akialoa, are highly susceptible to introduced avian disease. They are particularly susceptible to avian malaria (*Plasmodium relictum*), which results in high rates of mortality. At elevations below approximately 4,500 feet (1,372 meters) in Hawaii, the key factor driving disease epizootics (outbreaks) of pox virus (*Avipoxvirus*) and avian malaria is the seasonal and altitudinal distribution and density of the primary vector of these diseases, *Culex quinquefasciatus* (Atkinson and Lapointe 2009a, pp. 237–238, 245–246).

A recent analytic tool was consulted using information on threats to infer species extinction based on an evaluation of whether identified threats are sufficiently severe and prolonged to cause local extinction, and sufficiently extensive in geographic scope to eliminate all occurrences (Keith *et al.* 2017, p. 320). The disappearance of many Hawaiian honeycreeper species over the last century from areas below approximately 4,500 feet elevation points to effects of avian disease having been sufficiently severe and prolonged, and extensive in geographic scope, to cause widespread species' range contraction and possible extinction. It is highly likely avian disease is the primary causal factor for the disappearance of many species of Hawaiian honeycreepers from forested areas below 4,500 feet on the islands of Kauai, Oahu, Molokai, and Lanai (Scott *et al.* 1986, p. 148; Banko and Banko 2009, pp. 52–53; Atkinson and Lapointe 2009a, pp. 237–238).

It is widely established that small populations of animals are inherently more vulnerable to extinction because of random demographic fluctuations and stochastic environmental events (Mangel and Tier 1994, p. 607; Gilpin and Soulé 1986, pp. 24–34). Formerly widespread populations that become small and isolated often exhibit reduced levels of genetic variability, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (*e.g.,* Barrett and Kohn 1991, p. 4; Keller and Waller 2002, p. 240; Newman and Pilson 1997, p. 361). As populations are lost or decrease in size, genetic variability is reduced, resulting in increased vulnerability to disease and restricted potential evolutionary capacity to respond to novel stressors (Spielman *et al.* 2004, p. 15261; Whiteman *et al.* 2006, p. 797). As numbers decreased historically, effects of small population size were very likely to have negatively impacted Kauai akialoa, reducing its potential for long-term persistence.

Several recent surveys and searches (1981 to 2018), including the RBS, have been unsuccessful in detecting Kauai akialoa despite efforts by ornithologists (Conant *et al.* 1998, p. 15) and birders, and intensive survey efforts by wildlife biologists in 1968 to 1973, 1981, 1989, 1994, 2000, 2005, and from 2011 to 2018 (Hawaii Department of Land and Natural Resources unpubl. data; USFWS 1983, p. 2; Reynolds and Snetsinger 2001, entire; Crampton *et al.* 2017, entire; Crampton 2018, pers. comm.). Using 1969 as the last credible sightings, based on independent expert opinion, the estimated date for the species' extinction is 1973, with 95 percent confidence of the species having become extinct by 1984 (Elphick *et al.* 2010, p. 620).

IV. Conclusion

At the time of listing in 1967, the Kauai akialoa faced threats from habitat loss, avian disease, and predation by introduced mammals. The best available information now indicates that the Kauai akialoa is extinct. The species appears to have been vulnerable to introduced avian disease. In addition, the effects of small population size likely limited the species' genetic variation and adaptive capacity, thereby increasing the vulnerability of the species to environmental stressors including habitat loss and degradation. Since its last detection in 1969, qualified observers have conducted extensive surveys and searches but have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Kauai nukupuu (Hemignathus hanapepe)

I. Background

The Kauai nukupuu (*Hemignathus hanapepe*) was listed as endangered on March 11, 1967 (32 FR 4001), and was included in the Kauai Forest Birds Recovery Plan (USFWS 1983), as well as the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006). At the time of listing, observations of only two individuals had been reported during that century (USFWS 1983, p. 3). The last confirmed observation (based on independent expert opinion and physical evidence) of the species was in 1899 (Eliphick *et al.* 2010, p. 620). Two 5-year status reviews have been completed, in 2010 (initiated on April 11, 2006; see 71 FR 18345) and 2019 (initiated on February 13, 2015; see 80 FR 8100). The 2010 review did not recommend a change in status, though there was some information indicating the species was already extinct. The 5-year status review completed in 2019 recommended delisting due to extinction based on consideration of additional information about the biological status of the species, included in the discussion below (USFWS 2019, pp. 4–5, 10).

The historical record provides little information on the life history of Kauai nukupuu (USFWS 2006, p. 2–89). There is no specific information on the lifespan or breeding biology of Kauai nukupuu, although it is presumed to be similar to its closest relative, akiapolaau (*Hemignathus munroi,* listed as *Hemignathus wilsoni*), a honeycreeper from the island of Hawaii. Similar to the akiapolaau, the Kauai nukupuu uses its bill to extract invertebrates from epiphytes, bark, and wood. The last confirmed observation (based on independent expert opinion and physical evidence) of Kauai nukupuu was in 1899 (Eliphick *et al.* 2010, p. 620); however, there was an unconfirmed observation in 1995 (Conant *et al.* 1998, p. 14).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Kauai nukupuu was a medium-sized, approximately 23-gram (0.78-ounce), Hawaiian honeycreeper (family Fringillidae, subfamily Drepanidinae) with an extraordinarily thin, curved bill, slightly longer than the bird's head. The lower mandible was half the length of the upper mandible. Adult male plumage was olive-green with a yellow head, throat, and breast, whereas adult female and immature plumage consisted of an olive-green head and yellow or yellowish gray under-parts (USFWS 2006, p. 2–89). The long, curved, and extremely thin bill of Kauai nukupuu, in combination with its brightly colored plumage, would have made this bird highly detectable to ornithologists and birders had it persisted (USFWS 2006, p. 2–89). No subsequent sightings or vocalizations have been documented since the unconfirmed sighting in 1995, despite extensive survey efforts.

Survey Effort

In the absence of early historical surveys, the extent of the geographical range of the Kauai nukupuu is unknown. A comprehensive survey of Hawaiian forest birds was initiated in the 1970s using the VCP method (Scott *et al.* 1986, entire) (see *Survey Effort* section for the Kauai akialoa, above, for the description of the VCP surveys). Several recent surveys and searches, including the RBS, have been unsuccessful in detecting Kauai nukupuu despite intensive survey efforts by wildlife biologists from 1968 to 1973, and in 1981, 1989 1993, 1994, 2000, 2005, and 2011 to 2018 (Hawaii Department of Land and Natural Resources unpubl. data; Reynolds and Snetsinger 2001, entire; Crampton *et al.* 2017, entire; Crampton 2018 pers. comm.). During the RBS, Kauai nukupuu were not detected. The lack of detections combined with analysis of detection probability ($P \geq 0.95$) suggested that the possible population count was fewer than 10 birds in 1996 (Reynolds and Snetsinger 2001, p. 142).

Extensive time has been spent by qualified observers in the historical range of the Kauai nukupuu searching for the small Kauai thrush (*Myadestes palmeri*), akekee (*Loxops caeruleirostris*), and Kauai creeper (*Oreomystis bairdi*). Hawaii Forest Bird Surveys (HFBS) were conducted in 1981, 1989, 1994, 2000, 2005, 2007, 2008, 2012, and 2018 (Paxton *et al.* 2016, entire). During the HFBS in 2012 and 2018, occupancy surveys and nest searches did not yield any new detections of the Kauai nukupuu. The KFBRP conducted mist-netting in various locations within the historical range for the Kauai nukupuu from 2006 through 2009, and from 2011 through 2018, and no Kauai nukupuu were caught or encountered (Crampton 2018, pers. comm.). Despite contemporary

search efforts, the last credible sighting of Kauai nukupuu occurred in 1899.

Time Since Last Detection

Using 1899 as the last credible sighting of Kauai nukupuu based on independent expert opinion and physical evidence, the estimated date for the species' extinction was 1901, with 95 percent confidence that the species was extinct by 1906 (Elphick *et al.* 2010, p. 620).

III. Analysis

Some of the reported descriptions of this species better match the Kauai amakihi (*Chlorodrepanis stejnegeri*) (USFWS 2006, p. 2–90). Although skilled observers reported three unconfirmed sightings of Kauai nukupuu in 1995 (Reynolds and Snetsinger 2001, p. 142), extensive hours of searching within the historical range failed to detect any individuals. The last credible sightings of Kauai nukupuu was in 1899, based on independent expert opinion and physical evidence (Elphick *et al.* 2010, p. 620). It was estimated that 1901 was the year of extinction, with 95 percent confidence that the species was extinct by 1906. The species was likely vulnerable to the persistent threats of avian disease combined with habitat loss and degradation, which remain drivers of extinction for Hawaiian forest birds.

V. Conclusion

At the time of listing in 1967, the Kauai nukupuu had not been detected for almost 70 years. Since its last detection in 1899, qualified observers have conducted extensive surveys and searches throughout the range of the Kauai nukupuu and have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Kauai 'o'o (Moho braccatus)

I. Background

The Kauai 'o'o (*Moho braccatus*) was listed as endangered on March 11, 1967 (32 FR 4001), and was included in the Kauai Forest Birds Recovery Plan (USFWS 1983), as well as the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006). At the time of listing, the population size was estimated at 36 individuals (USFWS 1983, p. 3). Threats to the species included the effects of low population numbers, habitat loss, avian disease, and predation by introduced mammals. The last plausible record of a Kauai 'o'o was a vocal response to a recorded vocalization played by a field biologist on April 28, 1987, in the locality of Halepaakai Stream. Two 5-year status reviews have been completed, in 2009 (initiated on July 6, 2005; see 70 FR 38972) and 2018 (initiated on February 13, 2015; see 80 FR 8100). The 2009 review did not recommend a change in status, though there was some information indicating the species was already extinct. The 5-year status review completed in 2018 recommended delisting due to extinction based on consideration of new information about the biological status of the species, included in the discussion below (USFWS 2019, pp. 5, 10).

The Kauai 'o'o measured 7.7 inches (19.5 centimeters) and was somewhat smaller than the *Moho* species on the other islands. It was glossy black on the head, wings, and tail; smoky brown on the lower back, rump, and abdomen; and rufous-brown on the upper tail coverts. It had a prominent white patch at the bend of the wing. The thigh feathers were golden yellow in adults and black in immature birds (Berger 1972, p. 107). The Kauai 'o'o is one of four known Hawaiian species of the genus *Moho* and one of five known Hawaiian bird species within the family Mohoidae (Fleischer *et al.* 2008, entire). Its last known habitat was the dense ohia forest in the valleys of Alakai Wilderness Preserve. It reportedly fed on various invertebrates and the fruits and nectar from ohia, lobelia, and other flowering plants. There is no information on the lifespan of the Kauai 'o'o.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The vocalizations of this species were loud, distinctive, and unlikely to be overlooked. The song consisted of loud whistles that have been described as flute-like, echoing, and haunting, suggesting that detectability would be high in remaining suitable habitat if the Kauai 'o'o still existed (USFWS 2006 p. 2–47).

Survey Effort

In the absence of early historical surveys, the extent of the geographical range of the Kauai 'o'o cannot be reconstructed. The comprehensive surveys of Hawaiian forest birds are described in the Survey Effort section of the Kauai akialoa. Several recent surveys and searches, including the VCP and RBS, have been unsuccessful in detecting Kauai 'o'o despite intensive survey efforts by wildlife biologists from 1968 to 1973, and in 1981, 1989 1993, 1994, 2000, 2005, and 2011 to 2018 (Hawaii Department of Land and Natural Resources unpubl. data; Reynolds and Snetsinger 2001, entire; Crampton *et al.* 2017, entire; Crampton 2018 pers. comm.). During the RBS, coverage of the search area was extensive; therefore, there was a high probability of detecting a Kauai 'o'o. None were detected, and it was concluded the Kauai 'o'o was likely extinct ($P \geq 0.95$) (Reynolds and Snetsinger 2001, p. 142).

Extensive time has been spent by qualified observers in the historical range of the Kauai 'o'o searching for the small Kauai thrush (*Myadestes palmeri*), akekee (*Loxops caeruleirostris*), and Kauai creeper (*Oreomystis bairdi*). Hawaii Forest Bird Surveys (HFBS) were conducted in 1981, 1989, 1994, 2000, 2005, 2007, 2008, 2012, and 2018 (Paxton *et al.* 2016, entire). During the HFBS in 2012 and 2018, occupancy surveys and nest searches did not yield any new detections of Kauai 'o'o. The KFBRP conducted mist-netting in various locations within the historical range for Kauai 'o'o from 2006 through 2009 and 2011 through 2018, and no Kauai 'o'o were caught or encountered (Crampton 2018, pers. comm.). The last credible sighting was in 1987.

Time Since Last Detection

Using 1987 as the last credible sighting of the Kauai 'o'o based on independent expert opinion, the estimated date for the species' extinction was 1991, with 95 percent confidence that the species was extinct by 2000 (Elphick *et al.* 2010, p. 620).

III. Analysis

The various bird species in the subfamily Drepanidinae (also known as the Hawaiian honeycreepers), which includes Kauai 'o'o, are highly susceptible to introduced avian disease, particularly avian malaria (*Plasmodium relictum*). At elevations below approximately 4,500 feet (1,372 meters) in Hawaii, the key factor driving disease epizootics of pox virus (*Avipoxvirus*) and avian malaria is the seasonal and altitudinal distribution and density of the primary vector of these diseases, *Culex quinquefasciatus* (Atkinson and Lapointe 2009a, pp. 237–238, 245–246). Because they occur at similar altitudes and face similar threats, please refer to the Analysis section for the Kauai akialoa, above, for more information.

IV. Conclusion

At the time of listing in 1967, the Kauai 'o'o faced threats from effects of

low population numbers, habitat loss, avian disease, and predation by introduced mammals. The best available information now indicates that the Kauai ‘o‘o is extinct. The species appears to have been vulnerable to introduced avian disease. In addition, the effects of small population size likely limited the species' genetic variation and adaptive capacity, thereby increasing the vulnerability of the species to environmental stressors including habitat loss and degradation. Since its last detection in 1987, qualified observers have conducted extensive surveys and searches and have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Large Kauai Thrush (Myadestes myadestinus)

I. Background

The large Kauai thrush (*Myadestes myadestinus,* or kama‘o in the Hawaiian language) was listed as endangered on October 13, 1970 (35 FR 16047), and was included in the Kauai Forest Birds Recovery Plan (USFWS 1983), as well as the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006). At the time of listing, the population size was estimated at 337 individuals (USFWS 1983, p. 3). Threats to the species included effects of low population numbers, habitat loss, avian disease, and predation by introduced mammals. Two 5-year status reviews were completed in 2009 (initiated on July 6, 2005; see 70 FR 38972) and 2019 (initiated on February 13, 2015; see 80 FR 8100). The 2009 review did not recommend a change in status, though there was some information indicating the species was already extinct. The 5-year status review completed in 2019 recommended delisting due to extinction based on consideration of additional information about the biological status of the species, included in the discussion below (USFWS 2019, pp. 5, 10).

The large Kauai thrush was a medium-sized (7.9 inches, or 20 centimeters, total length) solitaire. Its plumage was gray-brown above, tinged with olive especially on the back, and light gray below with a whitish belly and undertail coverts. The large Kauai thrush lacked the white eye-ring and pinkish legs of the smaller puaiohi (small Kauai thrush, *Myadestes palmeri*) (USFWS 2006, p. 2–19). There is no specific information on the life history of the large Kauai thrush; however, it is presumed that it is similar to the more common and closely related Hawaii thrush (*Myadestes obscurus*). Nests of the large Kauai thrush have not been described but may be a cavity or low platform, similar to those of the Hawaii thrush. Nesting likely occurred in the spring. The diet of the large Kauai thrush was reported to include fruits and berries, as well as insects and snails. The last (unconfirmed) observation of the large Kauai thrush was made during the February 1989 Kauai forest bird survey (Hawaii Department of Land and Natural Resources unpubl. data). However, the last credible sighting of the large Kauai thrush occurred in 1987.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The large Kauai thrush was often described for its habit of rising into the air, singing a few vigorous notes and then suddenly dropping down into the underbrush. The vocalizations of this species varied between sweet and melodic to lavish and flute-like, often given just before dawn and after dusk (USFWS 2006 p. 2–19). These behaviors suggest that detectability would be high in remaining suitable habitat if the large Kauai thrush still existed. No subsequent sightings or vocalizations have been documented despite extensive survey efforts by biologists and birders.

Survey Effort

Several recent surveys and searches, including the VCP and RBS, have been unsuccessful in detecting the large Kauai thrush despite intensive survey efforts by wildlife biologists from 1968 to 1973, and in 1981, 1989, 1993, 1994, 2000, 2005, and 2011 to 2018 (Hawaii Department of Land and Natural Resources unpubl. data; Reynolds and Snetsinger 2001, entire; Crampton *et al.* 2017, entire; Crampton 2018, pers. comm.). During the RBS in 2001, coverage of the search area was extensive; therefore, they had a high probability of detecting the large Kauai thrush. None were detected, and it was concluded that the large Kauai thrush was likely extinct ($P \geq 0.95$) (Reynolds and Snetsinger 2001, p. 142).

Extensive time has been spent by qualified observers in the historical range of the large Kauai thrush searching for the small Kauai thrush (*Myadestes palmeri*), akekee (*Loxops caeruleirostris*), and Kauai creeper (*Oreomystis bairdi*). Hawaii Forest Bird Surveys (HFBS) were conducted in 1981, 1989, 1994, 2000, 2005, 2007, 2008, 2012, and 2018 (Paxton *et al.* 2016, entire). During the HFBS in 2012 and 2018, occupancy surveys and nest searches did not yield any new detections of the large Kauai thrush. The KFBRP conducted mist-netting in various locations within the historical range for the large Kauai thrush from 2006 through 2009, and from 2011 through 2018, and no large Kauai thrush were caught or encountered (Crampton 2018, pers. comm.). The last credible sighting of the large Kauai thrush occurred in 1987.

Time Since Last Detection

Using 1987 as the last credible sighting of the large Kauai thrush based on independent expert opinion, the estimated date for the species' extinction was 1991, with 95 percent confidence that the species was extinct by 1999 (Elphick *et al.* 2010, p. 620).

III. Analysis

Several recent surveys and searches, including the RBS and HFBS, have been unsuccessful in detecting the large Kauai thrush despite intensive survey efforts by wildlife biologists in 1993, 1994, 2000, 2005, and 2011 to 2018 (Hawaii Department of Land and Natural Resources unpubl. data; Reynolds and Snetsinger 2001, entire; Crampton *et al.* 2017, entire; Crampton 2018, pers. comm.). Using 1987 as the last credible sighting based on independent expert opinion and the species' observational record, the estimated date for the species' extinction was 1991, with 95 percent confidence the species was extinct by 1999 (Elphick *et al.* 2010, p. 620). Another analysis determined that the large Kauai thrush was probably extinct at the time of the RBS in 1994 ($P \geq 0.95$) (Reynolds and Snetsinger 2001, p. 142).

IV. Conclusion

At the time of listing in 1970, the large Kauai thrush faced threats from low population numbers, habitat loss, avian disease, and predation by introduced mammals. The best available information now indicates that the large Kauai thrush is extinct. The species appears to have been vulnerable to the effects of small population size, which likely limited its genetic variation, disease resistance, and adaptive capacity, thereby increasing the vulnerability of the species to the environmental stressors of habitat degradation and predation by nonnative mammals. Since its last credible detection in 1987, qualified observers have conducted extensive surveys and searches throughout the range of the

species but have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Maui Akepa (Loxops coccineus ochraceus)

I. Background

The Maui akepa (*Loxops coccineus ochraceus,* listed as *Loxops ochraceus*) was listed as endangered on October 13, 1970 (35 FR 16047), and was included in the Maui-Molokai Forest Birds Recovery Plan (USFWS 1984, pp. 12–13), and the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, pp. 2–94, 2–134–2–137). At the time of listing, we considered Maui akepa to have very low population numbers, and to face threats from habitat loss, avian disease, and predation by introduced mammals. Three 5-year status reviews have been completed; the 2010 (initiated on April 11, 2006; see 71 FR 18345) and 2015 (initiated on March 6, 2012; see 77 FR 13248) reviews did not recommend a change in status, though there was some information indicating the species was already extinct (USFWS 2010, p. 12; USFWS 2015, p. 10). The 5-year status review completed in 2018 (initiated on February 12, 2016; see 81 FR 7571) recommended delisting due to extinction, based in part on continued lack of detections and consideration of extinction probability (USFWS 2018, pp. 5, 10).

The Maui akepa was known only from the island of Maui in the Hawaiian Islands. Maui akepa were found in small groups with young in the month of June when the birds were molting (Henshaw 1902, p. 62). The species was observed preying on various insects including small beetles, caterpillars, and small spiders, as well as drinking the nectar of ohia (*Metrosideros polymorpha*) flowers (Rothschild 1893 to 1900, pp. 173–176; Henshaw 1902, p. 62; Perkins 1903, pp. 417–420). The species appeared to also use the ohia tree for nesting as a pair of Maui akepa was observed building a nest in the terminal foliage of a tall ohia tree (Perkins 1903, p. 420).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Maui akepa adult males varied from dull brownish orange to ochraceus (light brownish yellow), while females were duller and less yellowish (USFWS 2006, p. 2–134). Although the species was easily identifiable by sight, its small body size (less than 5 inches (13 centimeters) long) and habitat type (dense rain forest) made visual detection difficult. Songs and calls of Maui akepa could be confused with those of other Maui forest bird species; therefore, detection of the species requires visual confirmation of the individual producing the songs and calls (USFWS 2006, p. 2–135).

Survey Effort

In the absence of early historical surveys, the extent of the geographical range of the Maui akepa is unknown. Because the species occupied Maui Island, one might expect that it also inhabited Molokai and Lanai Islands like other forest birds in the Maui Nui group, but there are no fossil records of Maui akepa from either of these islands (USFWS 2006, p. 2–135). All historical records of the Maui akepa in the late 19th and early 20th century were from high-elevation forests most accessible to naturalists, near Olinda and Ukulele Camp on the northwest rift of Haleakala, and from mid-elevation forests in Kipahulu Valley (USFWS 2006, p. 2–134). This range suggests that the birds were missing from forests at lower elevations, perhaps due to the introduction of disease-transmitting mosquitoes to Lahaina in 1826 (USFWS 2006, p. 2–135). From 1970 to 1995, there were few credible sightings of Maui akepa (USFWS 2006, p. 2–136).

The population of Maui akepa was estimated at 230 individuals, with a 95 percent confidence interval of plus or minus 290 individuals (Scott *et al.* 1986, pp. 37, 154) during VCP surveys in 1980. In other words, the estimate projects a maximum population of 520 individuals and a minimum population of zero. However, confidence intervals were large, and this estimate was based on potentially confusing auditory detections, and not on visual observation (USFWS 2006, p. 2–136). On Maui, VCP surveys are conducted at survey stations spaced 328 to 820 feet (100 to 250 meters) apart, on transect lines spaced 1 to 2 miles (1.6 to 3.2 kilometers) apart (Scott *et al.* 1986, pp. 34–40). It is estimated that 5,865 8-minute point counts would be needed to determine with 95 percent confidence the absence of Maui akepa on Maui (Scott *et al.* 2008, p. 7). In 2008, only 84 VCP counts had been conducted on Maui in areas where this species was known to have occurred historically. Although the results of the 1980 VCP surveys find Maui akepa extant at that time, tremendous effort is required using the VCP method to confirm this species' extinction (Scott *et al.* 2008). For Maui akepa, nearly 70 times more VCP counts than conducted up to 2008 would be needed to confirm the species' extinction with 95 percent confidence.

Songs identified as Maui akepa were heard on October 25, 1994, during the RBS in Hanawi Natural Area Reserve (Hanawi NAR) and on November 28, 1995, from Kipahulu Valley at 6,142 feet (1,872 meters) elevation, but the species was not confirmed visually. Auditory detections of Maui akepa require visual confirmation because of possible confusion or mimicry with similar songs of Maui parrotbill (*Pseudonestor xanthophrys*) (Reynolds and Snetsinger 2001, p. 140). The last confirmed record, as defined above, of Maui akepa was from Hanawi NAR in 1988 (Engilis 1990, p. 69).

Qualified observers spent extensive time searching for Maui akepa, po'ouli (*Melamprosops phaeosoma*), and Maui nukupuu (*Hemignathus lucidus affinis,* listed as *Hemignathus affinis*) in the 1990s. Between September 1995 and October 1996, 1,730 acres (700 hectares) in Hanawi NAR were searched during 318 person-days (Baker 2001, p. 147), including the area with the most recent confirmed sightings of Maui akepa. During favorable weather conditions (good visibility and no wind or rain) teams would stop when ''chewee'' calls given by Maui parrotbill, or when po'ouli and Maui nukupuu were heard, and would play either Maui parrotbill or akiapolaau (*Hemignathus munroi,* listed as *Hemignathus wilsoni*) calls and songs to attract the bird for identification. Six po'ouli were found, but no Maui akepa were detected (Baker 2001, p. 147). The Maui Forest Bird Recovery Project (MFBRP) conducted searches from 1997 through 1999 from Hanawi NAR to Koolau Gap (west of Hanawi NAR), for a total of 355 hours at three sites with no detections of Maui akepa (Vetter 2018, pers. comm.). The MFBRP also searched Kipahulu Valley on northern Haleakala from 1997 to 1999, for a total of 320 hours with no detections of Maui akepa. However, the Kipahulu searches were hampered by bad weather, and playback was not used (Vetter 2018, pers. comm.). Despite over 10,000 person-hours of searches in the Hanawi NAR and nearby areas from October 1995 through June 1999, searches failed to confirm earlier detections of Maui akepa (Pratt and Pyle 2000, p. 37). While working on Maui parrotbill recovery from 2006 to 2011, the MFBRP spent extensive time in the area of the last Maui akepa sighting. The MFBRP project coordinator concluded that if Maui akepa were present, they would have been detected (Mounce 2018, pers. comm.).

Time Since Last Detection

The last confirmed sighting (as defined for the RBS) of the Maui akepa was in 1988 (Engilis 1990, p. 69). Surveys conducted during the late 1980s to the 2000s failed to locate the species (Pratt and Pyle 2000, p. 37; Baker 2001, p. 147). Using 1980 as the last documented observation record for Maui akepa (the 1988 sighting did not meet the author's criteria for a ''documented'' sighting), 1987 was estimated to be the year of extinction of Maui akepa, with 2004 as the upper 95 percent confidence bound on that estimate (Elphick *et al.* 2010, p. 620).

III. Analysis

Reasons for decline presumably are similar to threats faced by other endangered forest birds on Maui, including small populations, habitat degradation by feral ungulates and introduced invasive plants, and predation by introduced mammalian predators, including rats (*Rattus* spp.), cats (*Felis catus*), and mongoose (*Herpestes auropunctatus*) (USFWS 2006, p. 2–136). Rats may have played an especially important role as nest predators of Maui akepa. While the only nest of Maui akepa ever reported was built in tree foliage, the birds may also have selected tree cavities as does the very similar Hawaii akepa (*Loxops coccineus coccineus*). In Maui forests, nest trees are of shorter stature than where akepa survive on Hawaii Island. Suitable cavity sites on Maui are low in the vegetation, some near or at ground level, and thus more accessible to rats. High densities of both black and Polynesian rats (*Rattus rattus* and *R. exulans*) are present in akepa habitat on Maui (USFWS 2006, p. 2–136).

The population of Maui akepa was estimated at 230 birds in 1980 (Scott *et al.* 1986, p. 154); however, confidence intervals on this estimate were large. In addition, this may have been an overestimate because it was based on audio detections that can be confused with similar songs of Maui parrotbill. The last confirmed sighting of Maui akepa was in 1988, from Hanawi NAR (Engilis 1990, p. 69). Over 10,000 search hours in Hanawi NAR and nearby areas including Kipahulu Valley from October 1995 through June 1999 failed to confirm presence of Maui akepa (Pratt and Pyle 2000, p. 37). Field presence by qualified observers from 2006 to 2011 in the area Maui akepa was last known failed to detect this species, and the MFBRP project coordinator concluded that if Maui akepa were present they would have been detected (Mounce 2018, pers. comm.). Further, using the method to determine probability of species extinction based on time (years) since the species was last observed (using 1980 as the last documented observation record, as described above), the estimated year the Maui akepa became extinct is 1987, with 2004 as the upper 95 percent confidence bound on that estimate (Elphick *et al.* 2010, p. 620).

IV. Conclusion

At the time of listing in 1970, we considered the Maui akepa to be facing threats from habitat loss, avian disease, and predation by introduced mammals. The best available information now indicates that the Maui akepa is extinct. The species appears to have been vulnerable to the effects of small population size, which likely limited its genetic variation, disease resistance, and adaptive capacity, thereby increasing the vulnerability of the species to the environmental stressors of habitat degradation and predation by nonnative mammals. Since the last detection in 1988, qualified observers have conducted extensive surveys in that same area with no additional detections of the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that best available scientific and commercial information indicates that the species is extinct.

Maui Nukupuu (Hemignathus lucidus affinis)

I. Background

The Maui nukupuu (*Hemignathus lucidus affinis,* listed as *Hemignathus affinis*) was listed as endangered on October 13, 1970 (35 FR 16047), and was included in the Maui-Molokai Forest Birds Recovery Plan (USFWS 1984, pp. 8, 10–12), and the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, pp. 2–92–2–96). At the time of listing, we considered Maui nukupuu to have very low population numbers and to be threatened by habitat loss, avian disease, and predation by introduced mammals. The 5-year status review completed in 2018 (initiated on February 12, 2016; see 81 FR 7571) recommended delisting due to extinction (USFWS 2018, p. 11).

The Maui nukupuu was known only from the island of Maui in the Hawaiian Islands. The historical record provides little information on the life history of the Maui nukupuu (Rothschild 1893 to 1900, pp. 103–104; Perkins 1903, pp. 426–430). Nothing is known of its breeding biology, which likely was similar to its closest relative, the akiapolaau (*Hemignathus munroi*) on Hawaii Island. The Maui nukupuu was insectivorous and probed bark, lichen, and branches to extract insects, foraging behaviors that resembled those of akiapolaau. Diet of the Maui nukupuu was reported to be small weevils and larvae of orders Coleoptera and Lepidoptera (Perkins 1903, p. 429). There is scant evidence that Maui nukupuu took nectar from flowers. Maui nukupuu often joined mixed-species foraging flocks (Perkins 1903, p. 429).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The Maui nukupuu was a medium-sized (approximately 0.78 ounce, or 23 gram) Hawaiian honeycreeper with an extraordinarily thin, curved bill that was slightly longer than the bird's head. The lower mandible was half the length of the upper mandible and followed its curvature rather than being straight (as in the related akiapolaau) (USFWS 2006, p. 2–92). Adult males were olive green with a yellow head, throat, and breast, whereas adult females and juveniles had an olive-green head and yellow or yellowish gray under-parts. The species' coloration and bill shape were quite distinctive, making visual identification of Maui nukupuu relatively easy. The Maui nukupuu's song resembled the warble of a house finch (*Carpodacus mexicanus*), but was lower in pitch. Both the song and the ''kee-wit'' call resembled those of Maui parrotbill (*Pseudonestor xanthophrys*), and audio detection required visual confirmation (USFWS 2006, p. 2–92).

Survey Effort

Historically, the Maui nukupuu was known only from Maui, but subfossil bones of a probable Maui nukupuu from Molokai show that the species likely formerly inhabited that island (USFWS 2006, p. 2–92). All records from late 19th and early 20th centuries were from locations most accessible to naturalists, above Olinda on the northwest rift of Haleakala, and from mid-elevation forests in Kipahulu Valley (USFWS 2006, pp. 2–134). Observers at the time noted the restricted distribution and low population density of Maui nukupuu. As on Kauai, introduced mosquitoes and avian diseases may have already limited these birds to forests at higher elevations, and we can presume that the Maui nukupuu once had a much wider geographic range (USFWS 2006, pp. 2–92). In 1967, Maui nukupuu were rediscovered in the upper reaches of Kipahulu Valley on the eastern slope of Haleakala, east Maui (Banko 1968, pp.

65–66; USFWS 2006, pp. 2–95). Since then, isolated sightings have been reported on the northern and eastern slopes of Haleakala, but these reports are uncorroborated by behavioral information or follow-up sightings (USFWS 2006, pp. 2–95).

Based on a single sighting of an immature bird during VCP surveys in 1980, the population of Maui nukupuu was estimated to be 28 individuals, with a 95 percent confidence interval of plus or minus 56 individuals (Scott *et al.* 1986, pp. 37, 131). On Maui, VCP surveys are conducted at survey stations spaced 328 to 820 feet (100 to 250 meters) apart, on transect lines spaced 1 to 2 miles (1.6 to 3.2 kilometers) apart (Scott *et al.* 1986, pp. 34–40). It was estimated that 1,357 8-minute point counts would be needed to determine with 95 percent confidence the absence of Maui nukupuu on Maui (Scott *et al.* 2008, p. 7). In 2008, only 35 VCP counts had been conducted on Maui in areas where Maui nukupuu could still potentially exist. Although the results of VCP surveys in 1980 find Maui nukupuu extant at that time, a tremendous effort is required to confirm this species' extinction using VCP method (Scott *et al.* 2008). For Maui nukupuu, nearly 39 times more VCP counts than conducted up to 2008 would be needed to confirm this species' extinction with 95 percent confidence. The RBS reported an adult male Maui nukupuu with bright yellow plumage at 6,021 feet (1,890 meters) elevation in 1996 from Hanawi Natural Area Reserve (Hanawi NAR) (Reynolds and Snetsinger 2001, p. 140). Surveys and searches have been unsuccessful in finding Maui nukupuu since the last confirmed sighting by RBS. Based on these results, the last reliable record of Maui nukupuu was from Hanawi NAR in 1996 (24 years ago).

Qualified observers spent extensive time searching for Maui nukupuu, po'ouli (*Melamprosops phaeosoma*), and Maui akepa (*Loxops coccineus ochraceus,* listed as *Loxops ochraceus*) in the 1990s. Between September 1995 and October 1996, 1,730 acres (700 hectares) of Hanawi NAR were searched during 318 person-days (Baker 2001, p. 147). Please refer to the Maui akepa Survey Effort section above for the method used in this survey. The Maui Forest Bird Recovery Project (MFBRP) conducted searches from 1997 to 1999, from Hanawi NAR to Koolau Gap (west of the last sighting of Maui nukupuu) for a total of 355 hours of searches at three sites with no detections of Maui nukupuu (Vetter 2018, pers. comm.). The MFBRP also searched Kipahulu Valley on northern Haleakala from 1997 to 1999, for a total of 320 hours, with no detections of Maui nukupuu. The Kipahulu searches were hampered, however, by bad weather, and playback was not used (Vetter 2018, pers. comm.). Despite over 10,000 person-hours of searching in the Hanawi NAR and nearby areas from October 1995 through June 1999, searches failed to confirm detection in 1996 of Maui nukupuu, or produce other sightings (Pratt and Pyle 2000, p. 37). While working on Maui parrotbill recovery from 2006 to 2011, the MFBRP spent extensive time in the area of the last Maui nukupuu sighting. The MFBRP project coordinator concluded that if Maui nukupuu were still present they would have been detected (Mounce 2018, pers. comm.).

Time Since Last Detection

The Maui nukupuu was last sighted in the Hanawi NAR in 1996 (Reynolds and Snetsinger 2001, p. 140). Surveys conducted during the late 1990s and early 2000s were unable to locate the species (Pratt and Pyle 2000, p. 37; Baker 2001, p. 147).

Elphick et al 2010 (p. 630) attempted to apply their method to predict the probability of species extinction for the Maui nukupuu based on time (years) since the species was last observed (see *Time Since Last Detection* section for Kauai akialoa, above). Basing extinction probability solely on the sighting record without physical evidence has the drawback that an incorrect assignment of species extinction may occur due to inadequate survey effort and/or insufficient time spent by qualified observers in areas where the species could still potentially exist. Therefore, observations in 1967, 1980, and 1996 were not considered for this analysis because they did not meet the researchers' criteria for a confirmed sighting. Therefore, using 1896 as the last observation of Maui nukupuu, under their stringent criteria, the authors were unable to determine an estimated date for species extinction.

III. Analysis

The Maui nukupuu is also affected by small population sizes and other threats, as discussed above under the Analysis section for the Maui akepa. The population of Maui nukupuu was estimated to be 28 birds in 1980 (Scott *et al.* 1986, pp. 37, 131); however, confidence intervals on this estimate were large. This population was vulnerable to negative effects of small population size, including stochastic effects and genetic drift that can accelerate the decline of small populations. However, even rare species can persist despite having low numbers. The last confirmed sighting of Maui nukupuu was in 1996, from Hanawi NAR (Reynolds and Snetsinger 2001, p. 140). Over 10,000 person-search hours in Hanawi NAR and nearby areas, including Kipahulu Valley, from October 1995 through June 1999 failed to confirm this sighting or to detect other individuals (Pratt and Pyle 2000, p. 37). While working on Maui parrotbill recovery from 2006 to 2011, the MFBRP spent extensive time in the area of the last Maui nukupuu sighting; however, no Maui nukupuu were observed, and the MFBRP project coordinator concluded that if Maui nukupuu were still present they would have been detected (Mounce 2018, pers. comm.).

IV. Conclusion

At the time of listing in 1970, Maui nukupuu had very low population numbers and faced threats from habitat loss, avian disease, and predation by introduced mammals. The species appears to have been vulnerable to avian disease and the effects of small population size. The latter likely limited the species' genetic variation and adaptive capacity, thereby increasing the vulnerability of the species to the environmental stressors of habitat degradation and predation by nonnative mammals. Since its last detection in 1996, qualified observers have conducted extensive searches in the area where the species was last sighted and other native forest habitat where the species occurred historically, but have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial data indicate that the species is extinct.

Molokai Creeper (Paroeomyza flammea)

I. Background

The Molokai creeper (*Paroreomyza flammea,* or kākāwahie in the Hawaiian language) was listed as endangered on October 13, 1970 (35 FR 16047), and was included in the Maui-Molokai Forest Birds Recovery Plan (USFWS 1984, pp. 18–20) and the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, pp. 2–121– 2–123). At the time of listing, the Molokai creeper was considered extremely rare and faced threats from habitat loss, avian disease, and predation by introduced mammals. Three 5-year status reviews have been completed; the 2009 (initiated on July 6, 2005; see 70 FR 38972) and 2015 (initiated on March 6, 2012; see 77 FR 13248) reviews did not

recommend a change in status, though there was some information indicating the species was already extinct (USFWS 2009, p. 11; USFWS 2015, p. 8). The 5-year status review completed in 2018 (initiated on February 12, 2016; see 81 FR 7571) recommended delisting due to extinction based in part on continued lack of detections and consideration of extinction probability (USFWS 2018, p. 9).

The Molokai creeper was known only from Molokai in the Hawaiian Islands. Only fragmentary information is available about the life history of the species from the writings of early naturalists (Perkins 1903, pp. 413–417; Pekelo 1963, p. 64; USFWS 2006, p. 2–122). This species was an insectivore that gleaned vegetation and bark in wet ohia (*Metrosideros polymorpha*) forests and was known almost solely from boggy areas of Molokai (Pekelo 1963, p. 64), although there is one record in 1907 of the species from lower elevation forest of leeward east Molokai (USFWS 2006, pp. 2–121).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Adult males were mostly scarlet in various shades, while adult females were brown with scarlet washes and markings, and juvenile males ranged from brown to scarlet with many gradations. The bill was short and straight. Its calls were described as chip or chirping notes similar to other creeper calls (USFWS 2006, pp. 2–122). Its closest relatives are the Maui creeper (*Paroreomyza montana*) and the Oahu creeper (*P. maculata*). The species' coloration and bill shape were distinctive, and Molokai creeper was identified visually with confidence.

Survey Effort

Molokai creeper was common in 1907, but by the 1930s, they were considered in danger of extinction (Scott *et al.* 1986, p. 148). The species was last detected in 1963, on the west rim of Pelekunu Valley (Pekelo 1963, p. 64). Surveys and searches have been unsuccessful in finding the Molokai creeper since the last sighting, including VCP surveys on the Olokui Plateau in 1980 and 1988, and the RBS of the Kamakou-Pelekunu Plateau in 1995 (Reynolds and Snetsinger 2001, p. 141). Following up on a purported sighting in 2005 of a Molokai thrush (*Myadestes lanaiensis rutha*), a survey was conducted over 2 to 3 days in Puu Alii Natural Area Reserve (Puu Alii NAR), the last place the Molokai creeper was sighted in the 1960s (Pekelo 1963, p. 64; USFWS 2006, pp. 2–29). Using playback recordings for Molokai thrush, searchers covered the reserve area fairly well, but no Molokai creepers or Molokai thrush were detected (Vetter 2018, pers. comm.).

No Molokai creepers were detected during VCP surveys beginning in the late 1970s to the most recent Hawaiian forest bird survey on Molokai in 2010 (Scott *et al.* 1986, p. 37; Camp 2015, pers. comm.). On Molokai, VCP surveys are 8-minute point counts conducted at stations separated by a distance of 492 to 656 feet (150 to 200 meters) along transect lines 1 to 2 miles (1.6 to 3.2 kilometers) apart (Scott *et al.* 1986, pp. 34–40). It was estimated that 215,427 8-minute point counts would be needed to determine with 95 percent confidence the absence of Molokai creeper on Maui (Scott *et al.* 2008, p. 7). In 2008, only 131 VCP counts had been conducted on Molokai in areas where Molokai creeper could still potentially exist. For the Molokai creeper, nearly 1,650 times more VCP counts than conducted up to 2008 would be needed to confirm the species' extinction with 95 percent confidence. Based on species detection probability, the RBS determined the likelihood of the Molokai creeper being extirpated from the Kamakou-Pelekunu plateau was greater than 95 percent. The RBS estimated the Molokai creeper to be extinct over the entirety of its range, but, because not all potential suitable habitat was searched, extinction probability was not determined (Reynolds and Snetsinger 2001, p. 141).

Time Since Last Detection

The last reliable record (based on independent expert opinion and physical evidence) of Molokai creeper was from Pelekunu Valley in 1963 (Pekelo 1963, p. 64). Using 1963 as the last reliable observation record for Molokai creeper, 1969 is estimated to be year of extinction of the Molokai creeper with 1985 as the upper 95 percent confidence bound (Elphick *et al.* 2010, p. 620).

III. Analysis

The Molokai creeper faces similar threats to the other Maui bird species (see *Analysis* section for the Maui akepa, above). The last confirmed detection of the Molokai creeper was in 1963 (Pekelo 1963, p. 64). Forest bird surveys in 1980, 1988, and 2010, and the RBS in 1994–1996 (although not including the Olokui Plateau), failed to detect this species. A 2- to 3-day search by qualified personnel for the Molokai thrush in Puu Alii NAR in 2005, the last location where Molokai creeper was sighted, also failed to detect the Molokai creeper. The estimated year of extinction is 1969, with 1985 as the 95 percent confidence upper bound (Elphick *et al.* 2010, p. 620). It is highly likely that avian disease, thought to be the driver of range contraction and disappearance of many Hawaiian honeycreeper species, was present periodically throughout nearly all of the Molokai creeper's range over the last half-century.

IV. Conclusion

At the time of listing in 1970, the Molokai creeper was considered to be facing threats from habitat loss, avian disease, and predation by introduced mammals. The best information now indicates that the Molokai creeper is extinct. The species appears to have been vulnerable to avian disease, as well as the effects of small population size. The latter likely limited the species' genetic variation and adaptive capacity, thereby increasing the vulnerability of the species to the environmental stressors of habitat degradation and predation by nonnative mammals. Since its last detection in 1963, qualified observers have conducted extensive searches for the Molokai creeper but have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Po'ouli (Melamprosops phaeosoma)

I. Background

We listed the po'ouli (*Melamprosops phaeosoma*) as endangered on September 25, 1975 (40 FR 44149), and the species was included in the Maui-Molokai Forest Birds Recovery Plan (USFWS 1984, pp. 16–17), and the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, pp. 2–144–2–154). At the time of listing, we considered the po'ouli to have very low abundance and to likely be threatened by habitat loss, avian disease, and predation by introduced mammals. Three 5-year status reviews have been completed; the 2010 (initiated on April 11, 2006; see 71 FR 18346) and 2015 (initiated on March 6, 2012; see 77 FR 13248) reviews did not recommend a change in status, though there was some information indicating the species was already extinct (USFWS 2010, p. 13; USFWS 2105, p. 8). The 5-year status review completed in 2018 (initiated on February 12, 2016; see 81 FR 7571) recommended delisting due to extinction, based in part on continued lack of detections and consideration of

extinction probability (USFWS 2018, pp. 4–5, 10).

The po'ouli was known only from the island of Maui in the Hawaiian Islands and was first discovered in 1973, in high-elevation rainforest on the east slope of Haleakala (USFWS 2006, p. 2–146). Fossil evidence shows that the po'ouli once inhabited drier forests at lower elevation on the leeward slope of Haleakala, indicating it once had a much broader geographic and habitat range (USFWS 2006, p. 2–147). Po'ouli were observed singly, in pairs, and in family groups consisting of both parents and a single offspring (Pratt *et al.* 1997, p. 1). Po'ouli foraged primarily on tree branches, making extensive use of the subcanopy and understory. They seemed to have preferred the native hydrangea (kanawao (*Broussaisia arguta*)), the native holly (kawau (*Ilex anomala*)), and ohia (*Metrosideros polymorpha*) (Pratt *et al.* 1997, p. 4). Po'ouli gleaned from, probed, and excavated moss mats, lichen, and bark for small invertebrate prey. Egg-laying took place in March and April for two nests observed, and clutch size was probably two eggs (Kepler *et al.* 1996, pp. 620–638). The female alone incubated eggs and brooded chicks, but both parents fed the chicks. Throughout nesting, the male fed the female at or away from the nest. Po'ouli often associated with mixed species foraging flocks of other insectivorous honeycreepers. Po'ouli were unusually quiet. Males rarely sang and did so mostly as part of courtship prior to egg-laying. The maximum lifespan of this species is estimated to be 9 years (The Animal Aging and Longevity Database 2020, unpaginated).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The po'ouli was a medium-sized, 0.9 ounce (26 gram), stocky Hawaiian honeycreeper, easily recognized by its brown plumage and characteristic black mask framed by a gray crown and white cheek patch. However, po'ouli were unusually quiet. Although distinctive visually, because the species rarely vocalized, it was difficult to survey by audio detections.

Survey Effort

The po'ouli was first discovered in 1973 (USFWS 2006, p. 2–146). Total population was estimated at 140 individuals, with a 95 percent confidence interval of plus or minus 280 individuals, during VCP surveys in 1980 (Scott *et al.* 1986, pp. 37, 183), but estimates of population size and density were likely inaccurate and considered imprecise due to the species' low density and cryptic behavior (USFWS 2006, p. 2–147). In 1994, after nearly 2 years without a sighting, the continued existence and successful breeding of five to six po'ouli in the Kuhiwa drainage of Hanawi Natural Area Reserve (Hanawi NAR) was confirmed (Reynolds and Snetsinger 2001, p. 141). Thorough surveys of the historical range between 1997 and 2000, the Maui Forest Bird Recovery Program (MFBRP) located only three birds, all in separate territories in Hanawi NAR. These three po'ouli were color-banded in 1996 and 1997, and subsequently observed (see below), but no other individuals have been observed since then (Baker 2001, p. 144; USFWS 2006, pp. 2–147–2–148). The MFBRP searched Kipahulu Valley on northern Haleakala from 1997 to 2000, for a total of 320 hours, but failed to detect po'ouli. These searches were hampered by bad weather, however, and playback was not used (Vetter 2018, pers. comm.).

Time Since Last Detection

In 2002, what was thought to be the only female po'ouli of the three in Hanawi NAR was captured and released into one of the male's territories, but she returned to her home range the following day (USFWS 2006, p. 2–151). In 2004, an effort was initiated to capture the three remaining po'ouli to breed them in captivity. One individual was captured and successfully maintained in captivity for 78 days, but died on November 26, 2004, before a potential mate could be obtained. The remaining two birds were last seen in December 2003 and January 2004 (USFWS 2006, pp. 2–153–2–154). While working on Maui parrotbill (*Pseudonestor xanthophrys*) recovery from 2006 to 2011, the MFBRP spent extensive time in the area of the last po'ouli sightings. No po'ouli were seen or heard. The MFBRP project coordinator concluded that if po'ouli were present, they would have been detected (Mounce 2018, pers. comm.).

Using 2004 as the last reliable observation record for po'ouli, 2005 is estimated to be the year of extinction, with 2008 as the upper 95 percent confidence bound on that estimate (Elphick *et al.* 2010, p. 620).

III. Analysis

The Po'ouli faced similar threats to other Maui occurring bird species (see the Analysis section for the Maui akepa, above). The last confirmed sighting of po'ouli was in 2004 from Hanawi NAR (USFWS 2006, p. 2–154). Extensive field presence by qualified individuals from 2006 to 2011 in Hanawi NAR, where po'ouli was last observed, failed to detect this species, as did searches of Kipahulu Valley near Hanawi NAR from 1997 to 1999 (USFWS 2006, p. 2–94). Using 2004 as the last reliable observation record for po'ouli, the estimated year the species went extinct is 2005, with 2008 the upper 95 percent confidence bound on that estimate (Elphick *et al.* 2010, p. 620).

IV. Conclusion

At the time of its listing in 1975, we considered po'ouli to have very low population abundance, and to face threats from habitat loss, avian disease, and predation by introduced mammals. The best available information now indicates that the po'ouli is extinct. Although the po'ouli was last detected as recently as early 2004, the species appears to have been vulnerable to the effects of small population size since it was first discovered in 1973. The small population size likely limited its genetic variation, disease resistance, and adaptive capacity over time, thereby increasing the vulnerability of the species to the environmental stressors of habitat degradation and predation by nonnative mammals. Experienced staff with MFBRP conducted extensive recovery work in po'ouli habitat between 2006 and 2011 and had no detections of the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the species is extinct.

Fishes

San Marcos Gambusia (Gambusia georgei)

I. Background

We listed the San Marcos gambusia (*Gambusia georgei*), a small fish, as endangered throughout all of its range on July 14, 1980 (45 FR 47355). We concurrently designated approximately 0.5 miles of the San Marcos River as critical habitat for the species (45 FR 47355, July 14, 1980, p. 47364). The San Marcos gambusia was endemic to the San Marcos River in San Marcos, Texas. The San Marcos gambusia has historically only been found in a section of the upper San Marcos River approximately from Rio Vista Dam to a point near the U.S. Geological Survey gaging station immediately downstream from Thompson's Island. Only a limited number of species of *Gambusia* are native to the United States; of this subset, the San Marcos gambusia had one of the most restricted ranges.

We listed the species as endangered due to decline in population size, low

population numbers, and possibility of lowered water tables, pollution, bottom plowing (a farming method that brings subsoil to the top and buries the previous top layer), and cutting of vegetation (43 FR 30316, July 14, 1978, p. 30317). We identified groundwater depletion, reduced spring flows, contamination, habitat impacts resulting from severe drought conditions, and cumulative effects of human activities as threats to the species (45 FR 47355, July 14, 1980, p. 47361). At the time of listing, this species was extremely rare.

There has also been evidence of hybridization between *G. georgei* and *G. affinis* (western mosquitofish) in the wild. Hybridization between *G. georgei* and *G. affinis* continued for many years without documented transfer of genes between the species that would have resulted in the establishment of a new species (Hubbs and Peden 1969, p. 357). Based on collections in the 1920s, a study in the late 1960s, surmised that limited hybridization with *G. affinis* did not seem to have reduced the specific integrity of either species. However, as fewer *G. georgei* individuals existed in the wild and therefore encountered each other, the chances of hybridization with the much more common *G. affinis* increased.

All currently available scientific data and field survey data indicate that this species has been extinct in the wild for over 35 years. The last known sighting in the wild was in 1983, and past hybridization in the wild between *G. georgei* and *G. affinis* failed to result in establishment of a hybridized species that would facilitate the transfer of genes from one species to the other. Also, captive breeding attempts of *G. georgei* failed. In 1985, the last captive female San Marcos gambusia died. Because no males remained, we concluded captive breeding efforts, and no individuals remain alive in captivity today.

On March 20, 2008, we published a notice in the **Federal Register** (73 FR 14995) that we were initiating a 5-year review of the species. We did not receive any comments or new information, and the 5-year review was not completed at that time. On May 31, 2018, we published a notice in the **Federal Register** (83 FR 25034) initiating another 5-year review of the species. The review relied on available information, including survey results, fish collection records, peer-reviewed literature, various agency records, and correspondences with leading *Gambusia* species experts in Texas. That 5-year review recommended delisting the San Marcos gambusia due to extinction.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Historically, the San Marcos gambusia had small populations, and the pattern of abundance strongly suggests a decrease beginning prior to the mid-1970s. Historical records indicate that San Marcos gambusia was likely collected from the headwaters of the San Marcos River (Hubbs and Peden 1969, p. 28). The highest number of San Marcos gambusia ever collected was 119 in 1968. Because this species preferred sections of slow-moving waters and had a limited historical range of a small section of the San Marcos River, potential detection was not expected to be difficult.

Survey Effort

In 1976, we contracted a status survey to improve our understanding of the species and its habitat needs. We facilitated bringing individuals into captivity for breeding and study. Many researchers have been involved and have devoted considerable effort to attempts to locate and preserve populations. Intensive collections during 1978 and 1979 yielded only 18 San Marcos gambusia from 20,199 *Gambusia* total, which means San Marcos gambusia amounted to only 0.09 percent of those collections (Edwards *et al.* 1980, p. 20). Captive populations were established at the University of Texas at Austin in 1979, and fish from that captive population were used to establish a captive population at our Dexter National Fish Hatchery in 1980. Both captive populations later became contaminated with another *Gambusia* species. The fish hybridized, and the pure stocks were lost.

Following the failed attempt at maintaining captive populations at Dexter National Fish Hatchery and the subsequent listing of the species in 1980, we contracted for research to examine known localities and collect fish to establish captive refugia. Collections made in 1981 and 1982 within the range of San Marcos gambusia indicated a slight decrease in relative abundance of this species (0.06 percent of all *Gambusia*). From 1981 to 1984, efforts were made to relocate populations and reestablish a culture of individuals for captive refugia. Too few pure San Marcos gambusia and hybrids were found to establish a culture, although attempts were made with the few fish available (Edwards *et al.* 1980, p. 24). In the mid-1980s, staff from the San Marcos National Fish Hatchery and Technology Center also searched unsuccessfully for the species in attempts to locate individuals to bring into captivity.

Intensive searches for San Marcos gambusia were conducted in May, July, and September of 1990, but were unsuccessful in locating any pure San Marcos gambusia. The searches consisted of more than 180 people-hours of effort over the course of 3 separate days and covered the area from the headwaters at Spring Lake to the San Marcos wastewater treatment plant outfall. Over 15,450 *Gambusia* were identified during the searches. One individual collected during the search was visually identified as a possible backcross of *G. georgei* and *G. affinis* (Service 1990 permit report). This individual was an immature fish with plain coloration. Additional sampling near the Interstate Highway 35 type locality has occurred at approximately yearly intervals since 1990, and no San Marcos gambusia have been found. No San Marcos gambusia were found in the 32,811 *Gambusia* collected in the upper San Marcos River by the Service from 1994 to 1996 (Edwards 1999, pp. 6–13).

Time Since Last Detection

Academic researchers, Texas Parks and Wildlife Department scientists, and the Service have continued to search for the San Marcos gambusia during all collection and research with fishes on the San Marcos River. San Marcos gambusia have not been found in the wild since 1983, even with intensive searches, including the ones conducted in May, July, and September of 1990, covering the species' known range and designated critical habitat. Since 1996, all attempts to locate and collect San Marcos gambusia have failed (Edwards 1999, p. 3; Edwards *et al.* 2002, p. 358; Hendrickson and Cohen 2015; Bio-West 2016, p. 43; Bonner 2018, pers. comm.). More recent surveys and analyses of fish species already consider the San Marcos gambusia extinct (Edwards *et al.* 2002; Hubbs *et al.* 2008). Additionally, hybridized individuals have not been documented since 1990.

III. Analysis

Although the population of San Marcos gambusia was historically small, it also had one of the most restricted ranges of *Gambusia* species. San Marcos gambusia have not been found in the wild since 1983, even with intensive searches, including the ones conducted in May, July, and September of 1990, covering the species' known range and designated critical habitat. No San Marcos gambusia were found in the 32,811 *Gambusia* collected in the upper San Marcos River by the Service from 1994 to 1996 (Edwards 1999, pp. 6–13).

Additional sampling near the Interstate Highway 35 type locality has occurred at approximately yearly intervals since 1990. Since 1996, all attempts to survey and collect San Marcos gambusia failed to find them (Edwards 1999, p. 3; Edwards *et al.* 2002, p. 358; Hendrickson and Cohen 2015; Bio-West 2016, p. 43; Bonner 2018, pers. comm.). Additionally, no detections of hybridized San Marcos gambusia with *G. affinis* is further evidence that extinction has occurred.

In addition to the San Marcos gambusia not being found in the wild, all attempts at captive breeding have failed. This is largely due to unsuccessful searches for the species in attempts to locate individuals to bring into captivity.

Due to the narrow habitat preference and limited range of the San Marcos gambusia, and the exhaustive survey and collection efforts that have failed to detect the species, we conclude there is a very low possibility of an individual or population remaining extant but undetected. Therefore, the decrease in San Marcos gambusia abundance, and the lack of hybridized individuals in any recent samples, indicates that the species is extinct.

IV. Conclusion

The San Marcos gambusia was federally listed as endangered in 1980. At the time of listing, this species was rare. The last known collections of San Marcos gambusia from the wild were in 1981 (Edwards 2018, pers. comm.), and the last known sighting in the wild occurred in 1983. In 1985, after unsuccessful breeding attempts with *Gambusia affinis* from the upper San Marcos River, the last captive female San Marcos gambusia died. All available information and field survey data support a determination that the San Marcos gambusia has been extinct in the wild for more than 35 years. We have reviewed the best scientific and commercial data available to conclude that the species is extinct.

Scioto Madtom (Noturus trautmani)

I. Background

The Scioto madtom (*Noturus trautmani*) was listed as endangered on September 25, 1975 (40 FR 44149) due to the pollution and siltation of its habitat and the proposal to construct two impoundments within its range. Scioto madtom was included in 5-year reviews initiated on February 27, 1981 (46 FR 14652), July 22, 1985 (50 FR 29901), and on November 6, 1991 (56 FR 56882). These reviews resulted in no change in the Scioto madtom's listing classification of endangered. Two additional 5-year reviews were initiated in 2009 (74 FR 11600; March 18, 2009) and 2014 (79 FR 38560; July 8, 2014). The recommendations from both of these reviews were to delist the species due to extinction (Service 2009, p. 7; Service 2014, p. 6).

The Scioto madtom was a small, nocturnal species of catfish in the family Ictaluridae. The Scioto madtom has been found only in a small section of Big Darby Creek, a major tributary to the Scioto River, and was believed to be endemic to the Scioto River basin in central Ohio (40 FR 44149, September 25, 1975; Service 1985, p. 10; Service 1988, p. 1).

The species was first collected in 1943 (Trautman 1981, p. 504), and was first described as a species, *Noturus trautmani,* in 1969 (Taylor 1969, pp. 156–160). Only 18 individuals of the Scioto madtom were ever collected. All were found along one stretch of Big Darby Creek, and all but one were found within the same riffle known as Trautman's riffle. The riffle habitat was comprised of glacial cobble, gravel, sand, and silt substrate, with some large boulders (Trautman 1981, p. 505) with moderate current and high-quality water free of suspended sediments.

The Scioto madtom was an omnivorous bottom feeder that ate a wide variety of plant and animal life, which it found with its sensory barbels hanging down in front of its mouth. Little is known of its reproductive habits, although it likely spawned in summer and migrated downstream in the fall (Trautman 1981, p. 505).

The exact cause of the Scioto madtom's decline is unknown, but was likely due to modification of its habitat from siltation, suspended industrial effluents, and agricultural runoff (40 FR 44149, September 25, 1975; Service 1988, p. 2). At the time of listing, two dams were proposed for Big Darby Creek, although ultimately they were never constructed. It should also be noted that the northern madtom (*Noturus stigmosus*) was first observed in Big Darby Creek in 1957, the same year the last Scioto madtom was collected (Service 1982, p. 3; Kibbey 2009, pers. comm.). Both species likely feed on small invertebrates and shelter in openings in and around rocks and boulders. Given the apparent small population size and highly restricted range of the Scioto madtom in the 1940s and 1950s, it is possible that the species was unable to successfully compete with the northern madtom for the same food and shelter resources (Kibbey 2009, pers. comm.).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The Scioto madtom looked similar to other madtom species but could be distinguished by meristic and morphometric characters, such as the number of pectoral and anal rays. The species, like other madtom species, was relatively cryptic as they hid during the daylight hours under rocks or in vegetation and emerged after dark to forage along the bottom of the stream. Despite these detection challenges, many surveys by experienced biologists have been undertaken to try to locate extant populations of Scioto madtom.

Survey Effort

No Scioto madtoms have been observed since 1957, despite intensive fish surveys throughout Big Darby Creek in 1976–1977 (Service 1977, p. 15), 1981–1985 (Service 1982, p. 1; Service 1985, p. 1), 2014–2015 (OEPA 2018, p. 48), and 2001–2019 (Kibbey 2009, pers. comm.; Zimmerman 2014, 2020, pers. comm.).

The fish surveys conducted in Big Darby Creek in 1976–1977 and 1981–1985 specifically targeted the Scioto madtom. The 1976–1977 survey found 41 madtoms of 3 species and 34 species of fish in riffles at and near the Scioto madtom type locality (Service 1977, pp. 13–15). The 1981–1985 survey occurred throughout Big Darby Creek and found a total of 2,417 madtoms of 5 species (Service 1985, pp. 1, 5, 19–23). Twenty-two percent (542 individuals) of the total madtoms were riffle madtoms of the subgenus Rabida, which also includes the Scioto madtom (Service 1985, p. 1). None of the species identified were the Scioto madtom.

The 2014–2015 fish surveys occurred throughout the Big Darby Creek watershed as part of the Ohio Environmental Protection Agency's (OEPA's) water quality monitoring program. A total of 96,471 fish representing 85 different species and 6 hybrids, were collected at 93 sampling locations throughout the Big Darby Creek study area during the 2014 sampling season. Fish surveys were conducted at numerous sites in Big Darby Creek between 2001 and 2019, using a variety of survey techniques, including seining, boat electrofishing, backpack electrofishing, and dip netting (Zimmerman 2020, pers. comm.). Another survey was also conducted annually in the Big Darby Creek from 1970 to 2005 (Cavender 1999, pers. comm.; Kibbey 2016, pers. comm.).

These surveys also included extensive searches for populations of Scioto

madtoms outside of the type locality in Big Darby Creek (Kibbey 2016, pers. comm.). In addition to fish surveys in the Big Darby Creek watershed, the OEPA has conducted a number of fish studies throughout the Upper, Middle, and Lower Scioto River watershed as part of the agency's Statewide Water Quality Monitoring Program (OEPA 1993a, 1993b, 1999, 2002, 2004, 2006, 2008, 2012, 2019, entire). These surveys have never detected a Scioto madtom.

Time Since Last Detection

No collections of the Scioto madtom have been made since 1957. Given that the extensive fish surveys conducted since 1970 within the species' historical location, as well as along the entire length of Big Darby Creek and in the greater Scioto River watershed, have recorded three other species of madtom but not the Scioto madtom, it is highly unlikely that the Scioto madtom has persisted without detection.

Other Considerations Applicable to the Species' Status

The habitat that once supported the Scioto madtom has been drastically altered, primarily via strong episodic flooding. Although periodic flooding has historically been a part of Big Darby Creek's hydrological regime, many of the original riffles where Scioto madtoms were collected from just downstream of the U.S. Route 104 Bridge to approximately one-half mile upstream have been washed out to the point where they are nearly gone (Kibbey 2009, pers. comm.). Furthermore, pollution sources throughout the Scioto River watershed, including row crop agriculture, development, and urban runoff, have reduced the water quality and suitability of habitat for madtoms (OEPA 2012, pp. 1–2).

III. Analysis

There has been no evidence of the continued existence of the Scioto madtom since 1957. Surveys for the species were conducted annually between 1970 and 2005, at the only known location for the species. Additional surveys in the Big Darby Creek watershed have never found other locations of Scioto madtom. After decades of survey work with no individuals being detected, it is extremely unlikely that the species is extant. Further, available habitat for the species in the only location where it has been documented is now much reduced, which supports the conclusion that the species is likely extinct.

IV. Conclusion

We conclude that the Scioto madtom is extinct and, therefore, should be delisted. This conclusion is based on a lack of detections during numerous surveys conducted for the species and significant alteration of habitat at its known historical location.

Mussels

Flat Pigtoe (Pleurobema marshalli)

I. Background

The flat pigtoe (formerly known as Marshall's pearly mussel), *Pleurobema marshalli,* was listed as endangered on April 7, 1987 (52 FR 11162) primarily due to habitat alteration from a free-flowing riverine system to an impounded system. The recovery plan (''Recovery Plan for Five Tombigbee River Mussels'') was completed on November 14, 1989. A supplemental recovery plan (''Mobile River Basin Aquatic Ecosystem Recovery Plan'') was issued on November 17, 2000. This plan did not replace the existing recovery plan; rather, it was intended to provide additional habitat protection and species husbandry recovery tasks. The species' recovery priority number (RPN) is 5, indicating a high degree of threat and low recovery potential. A 5-year review was announced on November 6, 1991 (56 FR 56882); no changes were proposed for the status of this mussel in that review. Two additional 5-year reviews were completed in 2009 (initiated on September 8, 2006; see 71 FR 53127) and 2015 (initiated on March 25, 2014; see 79 FR 16366); both recommended delisting the flat pigtoe due to extinction. The Service solicited peer review from six experts for both 5-year reviews from State, Federal, university, and museum biologists with known expertise and interest in Mobile River Basin mussels (USFWS 2009, pp. 23–24; USFWS 2015, pp. 15–16); we received responses from three of the peer reviewers, and they concurred with the content and conclusion that the species is presumed extinct.

The flat pigtoe was described in 1927, from specimens collected in the Tombigbee River (USFWS 1989, p. 2). The shell of the flat pigtoe had pustules or welts on the postventral surface, and the adults were subovate in shape and approximately 2.4 inches long and 2 inches wide (USFWS 1989, p. 2). Freshwater mussels of the Mobile River Basin, such as the flat pigtoe, are most often found in clean, fast-flowing water in stable sand, gravel, and cobble gravel substrates that are free of silt (USFWS 2000, p. 81). They are typically found buried in the substrate in shoals and runs (USFWS 2000, p. 81). This type of habitat has been nearly eliminated within the historical range of the species because of the construction of the Tennessee-Tombigbee Waterway in 1984, which created a dredged, straightened navigation channel and a series of impoundments that inundated nearly all riverine mussel habitat (USFWS 1989, p. 1).

The flat pigtoe was historically known from the Tombigbee River from just above Tibbee Creek near Columbus, Mississippi, downstream to Epes, Alabama (USFWS 1989, p. 3). Surveys in historical habitat over the past three decades have failed to locate the species, and all historical habitat is impounded or modified by channelization and impoundments (USFWS 2015, p. 5). No live or freshly dead shells have been observed since the species was listed in 1987 (USFWS 2009, p. 4; USFWS 2015, p. 5).

The Tombigbee River freshwater mussel fauna once consisted of more than 40 species (USFWS 1989, p. 1). Construction of the Tennessee-Tombigbee Waterway adversely impacted some of the species (including flat pigtoe), as evidenced by surveys conducted by the Service, the Tennessee Valley Authority (TVA), the Mobile District Corps of Engineers, and others (USFWS 1989, p. 1). The construction of the Tennessee-Tombigbee Waterway was completed in 1984, and drastically modified the upper Tombigbee River from a riverine to a largely impounded ecosystem from Town Creek near Amory, Mississippi, downstream to the Demopolis Lock and Dam (USFWS 1989, p. 1). Construction of the Waterway adversely impacted mussels and eliminated mussel habitat by physical destruction during dredging, increasing sedimentation, reducing water flow, and suffocating juveniles with sediment (USFWS 1989, p. 6). The only remaining habitat after the Waterway was constructed was in several bendways, resulting from channel cuts. These bendways have all experienced reduced flows and increased sediment accumulation, some with several feet of sediment buildup. Thus, no remaining mussel habitat exists (USFWS 1989, p. 6; USFWS 2015, p. 8). The species is presumed extinct by species experts (USFWS 2015, p. 8).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging and can be

affected by a variety of factors, including:

- Size of the mussel (smaller mussels, including juvenile mussels, can be more difficult to find in complex substrates than larger mussels, and survey efforts must be thorough enough to try to detect smaller mussels);
- Behavior of the mussel (some are found subsurface, some at the surface, and some above the surface, and position can vary seasonally (some are more visible during the reproductive phase when they need to come into contact with host fish; therefore, surveys likely need to be conducted during different times of the year to improve detection));
- Substrate composition (it can be easier to see/feel mussels in sand and clay than in gravel or cobble; therefore, surveys need to include all substrate types because mussels can fall off host fish into a variety of substrates);
- Size of river (larger rivers usually have more expansive habitat areas to search and are sometimes deep, requiring specialized survey techniques such as self-contained underwater breathing apparatus (SCUBA));
- Flow conditions (visibility can be affected in very fast-flowing, very shallow, or turbid conditions; therefore, surveys need to use tactile or excavation methods, or delay until turbidity conditions improve);
- Surveyor experience (finding mussels requires a well-developed search image, knowledge of instream habitat dynamics, and ability to identify and distinguish species); and
- Survey methodology and effort (excavation and sifting of stream bottom can detect more mussels than visual or tactile surveys).

All of these challenges are taken into account when developing survey protocols for any species of freshwater mussel, including the flat pigtoe. The flat pigtoe was medium-sized (but juveniles were very small) and most often found buried in sand, gravel, or cobble in fast-flowing runs. However, mussels can be found in suboptimal conditions, depending on where they dropped off of the host fish. Therefore, all of the above-mentioned considerations need to be accounted for when trying to detect this mussel species. Despite detection challenges, many well-planned, comprehensive surveys by experienced State and Federal biologists have not been able to locate extant populations of flat pigtoe in the Tombigbee River (USFWS 2000, p. 81; USFWS 2015, p. 5).

Survey Effort

Prior to listing, freshly dead shells of flat pigtoe were collected in 1980, from the Tombigbee River, Lowndes County, Mississippi (USFWS 2009, pp. 4–5), and a 1984 survey of the Gainesville Bendway of Tombigbee River also found shells of the flat pigtoe (USFWS 1989, p. 4). After listing in 1987, surveys in 1988 and 1990 only found weathered, relict shells of the flat pigtoe below Heflin Dam, thus casting doubt on the continued existence of the species in the Gainesville Bendway (USFWS 1989, p. 4; USFWS 2009, p. 5). Over the past three decades, surveys between 1990–2001, and in 2002, 2003, 2009, 2011, and 2015, of potential habitat throughout the historical range, including intensive surveys of the Gainesville Bendway, where adequate habitat and flows may still occur below the Gainesville Dam on the Tombigbee River in Alabama, have failed to find any live or dead flat pigtoes (USFWS 2000, p. 81).

Time Since Last Detection

The flat pigtoe has not been collected alive since completion of the Tennessee-Tombigbee Waterway in 1984 (USFWS 2000, p. 81; USFWS 2015, p. 5). Mussel surveys within the Tombigbee River drainage during 1984–2015 failed to document the presence of the flat pigtoe (USFWS 2015, p. 8).

Other Considerations Applicable to the Species' Status

Habitat modification is the major cause of decline of the flat pigtoe (USFWS 2000, p. 81). Construction of the Tennessee-Tombigbee Waterway for navigation adversely impacted mussels and their habitat by physical destruction during dredging, increasing sedimentation, reducing water flow, and suffocating juveniles with sediment (USFWS 1989, p. 6). Other threats include channel improvements such as clearing and snagging, as well as sand and gravel mining, diversion of flood flows, and water removal for municipal use. These activities impact mussels by altering the river substrate, increasing sedimentation, changing water flows, and killing individuals via dredging and snagging (USFWS 1989, pp. 6–7). Runoff from fertilizers and pesticides results in algal blooms and excessive growth of other aquatic vegetation, resulting in eutrophication and death of mussels due to lack of oxygen (USFWS 1989, p. 7). The cumulative impacts of habitat degradation due to these factors likely led to flat pigtoe populations becoming scattered and isolated over time. Low population levels increased the difficulty of successful reproduction (USFWS 1989, p. 7). When individuals become scattered, the opportunity for egg fertilization is diminished. Coupled with habitat changes that result in reduced host fish interactions, the spiral of failed reproduction leads to local extirpation and eventual extinction of the species (USFWS 1989, p. 7).

III. Analysis

There has been no evidence of the continued existence of the flat pigtoe for more than three decades. Mussel surveys within the Tombigbee River drainage from 1984–2015 have failed to document the presence of the species (USFWS 2015, p. 8). All known historical habitat has been altered or degraded by impoundments, and the species is presumed extinct by most authorities.

IV. Conclusion

We conclude that the flat pigtoe is extinct and, therefore, should be delisted. This conclusion is based on significant alteration of all known historical habitat and lack of detections during numerous surveys conducted throughout the species' range.

Southern Acornshell (Epioblasma othcaloogensis)

I. Background

The southern acornshell (*Epioblasma othcaloogensis*) was listed as endangered on March 17, 1993 (58 FR 14330), primarily due to habitat modification, sedimentation, and water quality degradation. The recovery plan (''Mobile River Basin Aquatic Ecosystem Recovery Plan'') was completed on November 17, 2000. Critical habitat was initially determined to be not prudent (56 FR 58339, November 19, 1991, p. 58346) and later not determinable (58 FR 14330, March 17, 1993, p. 14338), but in 2001, in response to a legal challenge to the ''not determinable'' finding, the U.S. District Court for the Eastern District of Tennessee issued an order requiring the Service to propose and finalize critical habitat for 11 Mobile River Basin-listed mussels, including the southern acornshell. We subsequently published a final critical habitat rule on July 1, 2004 (69 FR 40084). Two 5-year reviews were completed in 2008 (initiated on June 14, 2005; see 70 FR 34492) and 2018 (initiated on September 23, 2014; see 79 FR 56821), both recommending delisting the southern acornshell due to extinction. We solicited peer review from eight experts for both 5-year reviews from State, Federal, university, nongovernmental, and museum

biologists with known expertise and interest in Mobile River Basin mussels (Service 2008, pp. 36–37; Service 2018, p. 15); we received responses from five of the peer reviewers, who all concurred with the content and conclusion that the species is presumed extinct.

The southern acornshell was described in 1857 from Othcalooga Creek in Gordon County, Georgia (58 FR 14330, March 17, 1993, p. 14331). Adult southern acornshells were round to oval in shape and approximately 1.2 inches in length (Service 2000, p. 57). *Epioblasma othcaloogensis* was included as a synonymy of *E. penita* and was considered to be an ectomorph of the latter (58 FR 14330, March 17, 1993, p. 14331). Subsequent research classified the southern acornshell as distinct, belonging in a different subgenus; the species is distinguished from the upland combshell (*E. metastriata*) and the southern combshell (*E. penita*) by its smaller size, round outline, a poorly developed sulcus, and its smooth, shiny, yellow periostracum (58 FR 14330, March 17, 1993, p. 14331). The Service recognizes *Unio othcaloogensis* (Lea) and *Unio modicellus* (Lea) as synonyms of *Epioblasma othcaloogensis.*

The southern acornshell was historically found in shoals in small rivers to small streams in the Coosa and Cahaba river systems (Service 2000, p. 57). As with many of the freshwater mussels in the Mobile River Basin, it was found in stable sand, gravel, cobble substrate in moderate to swift currents. The species had a sexual reproduction strategy and require a host fish to complete the life cycle. Historically, the species occurred in upper Coosa River tributaries and the Cahaba River in Alabama, Georgia, and Tennessee (Service 2000, p. 57). In the upper Coosa River system, the southern acornshell occurred in the Conasauga River, Cowan's Creek, and Othcalooga Creek (58 FR 14330, March 17, 1993, p. 14331). At the time of listing in 1993, the species was estimated to persist in low numbers in streams in the upper Coosa River drainage in Alabama and Georgia, and possibly in the Cahaba River (58 FR 14330, March 17, 1993, p. 14331; Service 2018, p. 6). The southern acornshell was last collected in 1973, from the Conasauga River in Georgia and from Little Canoe Creek, near the Etowah and St. Clair County line, Alabama. It has not been collected from the Cahaba River since the 1930s (Service 2018, p. 5).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to the Species Detectability section for the flat pigtoe above for the descriptions of these factors. The southern acornshell was small-sized (with very small juveniles) and most often found buried in sand, gravel, or cobble in fast flowing runs. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish. Therefore, all of the detection considerations need to be accounted for when trying to detect this mussel species. Despite detection challenges, many well-planned, comprehensive surveys by experienced State and Federal biologists have not been able to locate extant populations of southern acornshell (Service 2000, p. 57; Service 2008, p. 20; Service 2018, p. 7).

Survey Effort

Prior to listing, southern acornshell was observed during surveys in the upper Coosa River drainage in Alabama and Georgia in 1966–1968 and in 1971–1973, by Hurd (58 FR 14330, March 17, 1993, p. 14331). Records of the species in the Cahaba River are from surveys at Lily Shoals in Bibb County, Alabama, in 1938, and from Buck Creek (Cahaba River tributary), Shelby County, Alabama, in the early 1900s (58 FR 14330, March 17, 1993, p. 14331). Both the 2008 and 2018 5-year reviews reference multiple surveys by experienced Federal, State, and private biologists—17 survey reports from 1993–2006 and 6 survey reports from 2008–2017—and despite these repeated surveys of historical habitat in both the Coosa and Cahaba River drainages, no living animals or fresh or weathered shells of the southern acornshell have been located (Service 2008, p. 19; Service 2018, p. 6).

Time Since Last Detection

The most recent records for the southern acornshell were from tributaries of the Coosa River in 1966–1968 and 1974, and the Cahaba River in 1938 (58 FR 14330, March 17, 1993, p. 14331; Service 2008, p. 19; Service 2018, p. 5). No living populations of the southern acornshell have been located since the 1970s (Service 2000, p. 57; Service 2008, p. 20; Service 2018, p. 7).

Other Considerations Applicable to the Species' Status

Habitat modification was the major cause of decline of the southern acornshell (Service 2000, p. 57). Other threats included channel improvements such as clearing and snagging, as well as sand and gravel mining, diversion of flood flows, and water removal for municipal use; these activities impacted mussels by alteration of the river substrate, increasing sedimentation, alteration of water flows, and direct mortality from dredging and snagging (Service 2000, p. 6–13). Runoff from fertilizers and pesticides results in algal blooms and excessive growth of other aquatic vegetation, resulting in eutrophication and death of mussels due to lack of oxygen (Service 2000, p. 13). The cumulative impacts of habitat degradation likely lead to the southern acornshell populations becoming scattered and isolated over time. Low population levels mean increased difficulty for successful reproduction (Service 2000, p. 14). When individuals become scattered, the opportunity for a female southern acornshell to successfully fertilize eggs is diminished, and the spiral of failed reproduction leads to local extirpation and eventual extinction of the species (Service 2000, p. 14).

III. Analysis

There has been no evidence of the continued existence of the southern acornshell for over five decades; the last known specimens were collected in the early 1970s. When listed in 1993, it was thought that the southern acornshell was likely to persist in low numbers in the upper Coosa River drainage and, possibly, in the Cahaba River. Numerous mussel surveys have been completed within these areas, as well as other areas within the historical range of the species since the listing, with no success. Although other federally listed mussels have been found by mussel experts during these surveys, no live or freshly dead specimens of the southern acornshell have been found (Service 2018, p. 7). The species is presumed extinct.

IV. Conclusion

We conclude that the southern acornshell is extinct and, therefore, should be delisted. This conclusion is based on significant alteration of known historical habitat and lack of detections during numerous surveys conducted throughout the species' range.

Stirrupshell (Quadrula stapes)

I. Background

The stirrupshell (*Quadrula stapes*) was listed as endangered on April 7, 1987 (52 FR 11162), primarily due to habitat alteration from a free-flowing riverine system to an impounded system. The recovery plan (''Recovery Plan for Five Tombigbee River Mussels'') was completed on November 14, 1989. A supplemental recovery plan (''Mobile River Basin Aquatic Ecosystem Recovery Plan'') was completed on November 17, 2000. This plan did not replace the existing recovery plan; rather, it was intended to provide additional habitat protection and species husbandry recovery tasks. A 5-year review was announced on November 6, 1991 (56 FR 56882); no changes were proposed for the status of the stirrupshell in that review. Two additional 5-year reviews were completed in 2009 (initiated on September 8, 2006; see 71 FR 53127) and 2015 (initiated on March 25, 2014; see 79 FR 16366); both recommended delisting the stirrupshell due to extinction. We solicited peer review from six experts for both 5-year reviews from State, Federal, university, and museum biologists with known expertise and interest in Mobile River Basin mussels (Service 2009, pp. 23–24; Service 2015, pp. 15–16); we received responses from three of the peer reviewers, and they concurred with the content and conclusion that the species is presumed extinct.

The stirrupshell was described as *Unio stapes* in 1831, from the Alabama River (Stansbery 1981, entire). Other synonyms are *Margarita* (*Unio*) *stapes* in 1836, *Margaron* (*Unio*) *stapes* in 1852, *Quadrula stapes* in 1900, and *Orthonymus stapes* in 1969 (Service 1989, pp. 2–3). Adult stirrupshells were quadrate in shape and reached a size of approximately 2 inches long and 2 inches wide. The stirrupshell differed from other closely related species by the presence of a sharp posterior ridge and truncated narrow rounded point posteriorly on its shell, and it had a tubercled posterior surface (Service 1989, p. 3; Service 2000, p. 85). Freshwater mussels of the Mobile River Basin, such as the stirrupshell, are most often found in clean, fast-flowing water in stable sand, gravel, and cobble gravel substrates that are free of silt (Service 2000, p. 85). They are typically found buried in the substrate in runs (Service 2000, p. 85). This type of habitat has been nearly eliminated in the Tombigbee River because of the construction of the Tennessee-Tombigbee Waterway, which created a dredged, straightened navigation channel and series of impoundments that inundated much of the riverine mussel habitat (Service 1989, p. 1).

The stirrupshell was historically found in the Tombigbee River from Columbus, Mississippi, downstream to Epes, Alabama; the Sipsey River, a tributary to the Tombigbee River in Alabama; the Black Warrior River in Alabama; and the Alabama River (Service 1989, p. 3). Surveys in historical habitat over the past three decades have failed to locate the species, as all historical habitat is impounded or modified by channelization and impoundments (Tombigbee and Alabama Rivers) or impacted by sediment and nonpoint pollution (Sipsey and Black Warrior Rivers) (Service 1989, p. 6; Service 2000, p. 85; Service 2015, p. 5). No live or freshly dead shells have been observed since the species was listed in 1987 (Service 2009, p. 6; Service 2015, p. 7). A freshly dead shell was last collected from the lower Sipsey River in 1986 (Service 2000, p. 85).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to the Species Detectability section for the flat pigtoe above for the descriptions of these factors. The stirrupshell was medium-sized (with very small juveniles) and most often found buried in sand, gravel, or cobble in fast flowing runs. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish. Therefore, all of the detection considerations need to be accounted for when trying to detect this mussel species. Despite detection challenges, many well-planned, comprehensive surveys by experienced State and Federal biologists have not been able to locate extant populations of stirrupshell (Service 1989, pp. 3–4; Service 2000, p. 85; Service 2015, pp. 7–8).

Survey Effort

Prior to listing in 1987, stirrupshell was collected in 1978, from the Sipsey River, and a 1984 and 1986 survey of the Sipsey River found freshly dead shells; a 1984 survey of the Gainesville Bendway of Tombigbee River found freshly dead shells of the stirrupshell (Service 1989, p. 4; Service 2000, p. 85). After listing, surveys in 1988 and 1990 only found weathered, relict shells of the stirrupshell from the Tombigbee River at the Gainesville Bendway and below Heflin Dam, which cast doubt on the continued existence of the species in the mainstem Tombigbee River (Service 1989, p. 4; Service 2009, p. 6). Over the past three decades, repeated surveys (circa 1988, 1998, 2001, 2002, 2003, 2006, 2011) of unimpounded habitat in the Sipsey and Tombigbee Rivers, including intensive surveys of the Gainesville Bendway, have failed to find any evidence of stirrupshell (Service 2009, p. 6; Service 2015, p. 7). The stirrupshell was also known from the Alabama River; however, over 92 hours of dive bottom time were expended searching appropriate habitats for imperiled mussel species between 1997–2007 without encountering the species (Service 2009, p. 6), and a survey of the Alabama River in 2011 also did not find stirrupshell (Service 2015, p. 5). Surveys of the Black Warrior River in 1993 and from 2009–2012 (16 sites) focused on finding federally listed and State conservation concern priority mussel species but did not find any stirrupshells (Miller 1994, pp. 9, 42; McGregor *et al.* 2009, p. 1; McGregor *et al.* 2013, p. 1).

Time Since Last Detection

The stirrupshell has not been collected alive since the Sipsey River was surveyed in 1978 (Service 1989, p. 4); one freshly dead shell was last collected from the Sipsey River in 1986 (Service 2000, p. 85). In the Tombigbee River, the stirrupshell has not been collected alive since completion of the Tennessee-Tombigbee Waterway in 1984 (Service 2015, p. 7). Mussel surveys within the Tombigbee River drainage during 1984–2015 failed to document the presence of the stirrupshell (Service 2015, p. 8). The stirrupshell has not been found alive in the Black Warrior River or the Alabama River since the early 1980s (Service 1989, p. 3).

Other Considerations Applicable to the Species' Status

Because the stirrupshell occurred in similar habitat type and area as the flat pigtoe, it faced similar threats. Please refer to the discussion for the flat pigtoe for more information.

III. Analysis

There has been no evidence of the continued existence of the stirrupshell for nearly four decades; the last live individual was observed in 1978 and the last freshly dead specimen was from 1986. Mussel surveys within the Tombigbee River drainage (including the Sipsey and Black Warrior

tributaries) from 1984–2015, and the Alabama River from 1997–2007 and in 2011, have failed to document the presence of the species (Service 2015, pp. 5, 8). All known historical habitat has been altered or degraded by impoundments and nonpoint source pollution, and the species is presumed extinct by most authorities.

IV. Conclusion

We conclude that the stirrupshell is extinct and, therefore, should be delisted. This conclusion is based on significant alteration of all known historical habitat and lack of detections during numerous surveys conducted throughout the species' range.

Upland Combshell (Epioblasma metastriata)

I. Background

The upland combshell, *Epioblasma metastriata,* was listed as endangered on March 17, 1993 (58 FR 14330), primarily due to habitat modification, sedimentation, and water quality degradation. The recovery plan (''Mobile River Basin Aquatic Ecosystem Recovery Plan'') was completed on November 17, 2000. Critical habitat was initially determined to be not prudent (56 FR 58339, November 19, 1991, p. 58346) and later not determinable (58 FR 14330, March 17, 1993, p. 14338), but in 2001, in response to a legal challenge to the ''not determinable'' finding, the U.S. District Court for the Eastern District of Tennessee issued an order requiring the Service to propose and finalize critical habitat for 11 Mobile River Basin-listed mussels, including the upland combshell. We subsequently published a final critical habitat rule on July 1, 2004 (69 FR 40084). Two 5-year reviews were completed in 2008 (initiated on June 14, 2005; see 70 FR 34492) and 2018 (initiated on September 23, 2014; see 79 FR 56821), both recommending delisting the upland combshell due to extinction. We solicited peer review from eight experts for both 5-year reviews from State, Federal, university, nongovernmental, and museum biologists with known expertise and interest in Mobile River Basin mussels (Service 2008, pp. 36–37; Service 2018, p. 15); we received responses from five of the peer reviewers, who concurred with our conclusion that the species is presumed extinct.

The upland combshell was described in 1838, from the Mulberry Fork of the Black Warrior River near Blount Springs, Alabama (58 FR 14330, March 17, 1993, p. 14331). Adult upland combshells were rhomboidal to quadrate in shape and were approximately 2.4 inches in length (58 FR 14330, March 17, 1993, pp. 14330–14331). The upland combshell was considered to be a variation of the southern combshell (= penitent mussel, *Epioblasma penita*), and they were considered synonyms of each other (58 FR 14330, March 17, 1993, p. 14331). However, subsequent research identified morphological differences between the two, and both species were considered to be valid taxa; the upland combshell was distinguished from the southern combshell by the diagonally straight or gently rounded posterior margin of the latter, which terminated at the post-ventral extreme of the shell (58 FR 14330, March 17, 1993, p. 14331). We recognize *Unio metastriatus* and *Unio compactus* as synonyms of *Epioblasma metastriata* (58 FR 14330, March 17, 1993, p. 14331).

The upland combshell was historically found in shoals in rivers and large streams in the Black Warrior, Cahaba, and Coosa River systems above the Fall Line in Alabama, Georgia, and Tennessee (Service 2000, p. 61). As with many of the freshwater mussels in the Mobile River Basin, it was found in stable sand, gravel, and cobble in moderate to swift currents. The historical range included the Black Warrior River and tributaries (Mulberry Fork and Valley Creek); Cahaba River and tributaries (Little Cahaba River and Buck Creek); and the Coosa River and tributaries (Choccolocco Creek and Etowah, Conasauga, and Chatooga Rivers) (58 FR 14330, March 17, 1993, p. 14331). At the time of listing in 1993, the species was estimated to be restricted to the Conasauga River in Georgia, and possibly portions of the upper Black Warrior and Cahaba River drainages (58 FR 14330, March 17, 1993, p. 14331; Service 2008, p. 19). The upland combshell was last collected in the Black Warrior River drainage in the early 1900s; in the Coosa River drainage in 1986, from the Conasauga River near the Georgia/Tennessee State line; and the Cahaba River drainage in the early 1970s (58 FR 14330, March 17, 1993, p. 14331; Service 2000, p. 61; Service 2018, p. 5).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to the Species Detectability section for the flat pigtoe above for the descriptions of these factors. The Upland combshell was small-sized (with very small juveniles) and most often found buried in sand, gravel, or cobble in fast flowing runs. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish. Therefore, all of the detection considerations need to be accounted for when trying to detect this mussel species. Despite detection challenges, many well-planned, comprehensive surveys by experienced State and Federal biologists have not been able to locate extant populations of upland combshell (Service 2008, p. 19; Service 2018, p. 5)

Survey Effort

Prior to listing in 1993, upland combshell was observed during surveys in the Black Warrior River drainage in the early 1900s; repeated surveys in this drainage in 1974, 1980–1982, 1985, and 1990 did not encounter the species (58 FR 14330, March 17, 1993, p. 14331). The upland combshell was observed in the Cahaba River drainage in 1938 and in 1973, but a 1990 survey failed to find the species in the Cahaba River drainage (58 FR 14330, March 17, 1993, p. 14331). The species was observed in the upper Coosa River drainage in Alabama and Georgia in 1966–1968, but not during 1971–1973 surveys; a single specimen was collected in 1988 from the Conasauga River (58 FR 14330, March 17, 1993, p. 14331). Both the 2008 and 2018 5-year reviews reference multiple surveys by experienced Federal, State, and private biologists—18 survey reports from 1993–2006 and 10 survey reports from 2008–2017—and despite these repeated surveys of historical habitat in the Black Warrior, Cahaba, and Coosa River drainages, no living animals or fresh or weathered shells of the upland combshell have been located (Service 2008, p. 19; Service 2018, p. 5).

Time Since Last Detection

The most recent records for the upland combshell are many decades old: From tributaries of the Black Warrior in early 1900s, from the Cahaba River drainage in the early 1970s, and from the Coosa River drainage in the mid-1980s (58 FR 14330, March 17, 1993, p. 14331; Service 2008, p. 19; Service 2018, p. 5). No living populations of the upland combshell have been located since the mid-1980s (Service 2000, p. 61; Service 2008, p. 20; Service 2018, p. 7).

Other Considerations Applicable to the Species' Status

Because the upland combshell occurred in similar habitat type and area

as the southern acornshell, it faced similar threats. Please refer to the discussion for the southern acornshell for more information on any other overarching consideration.

III. Analysis

There has been no evidence of the continued existence of the upland combshell for over three decades; the last known specimens were collected in the late-1980s. When listed, it was thought that the upland combshell was likely restricted to the Conasauga River in Georgia, and possibly portions of the upper Black Warrior and Cahaba River drainages. Numerous mussel surveys have been completed within these areas, as well as other areas within the historical range of the species since the late-1980s, with no success. Although other federally listed mussels have been found by mussel experts during these surveys, no live or freshly dead specimens of the upland combshell have been found (Service 2018, p. 7). The species is presumed extinct.

IV. Conclusion

We conclude that the upland combshell is extinct and, therefore, should be delisted. This conclusion is based on significant alteration of known historical habitat and lack of detections during numerous surveys conducted throughout the species' range.

Green Blossom (Epioblasma torulosa gubernaculum)

I. Background

The green blossom (pearly mussel), *Epioblasma torulosa gubernaculum,* was listed as endangered on June 14, 1976 (41 FR 24062), and the final recovery plan was issued on July 9, 1984. At the time of listing, the single greatest factor contributing to the species' decline was the alteration and destruction of stream habitat due to impoundments. Two 5-year reviews were completed in 2007 (initiated on September 20, 2005; see 70 FR 55157) and 2017 (initiated on March 25, 2014; see 79 FR 16366); both reviews recommended delisting due to extinction. For the 2017 5-year review, the Service solicited peer review from eight peer reviewers including Federal and State biologists with known expertise and interest in blossom pearly mussels (the green blossom was one of four species assessed in this 5-year review). All eight peer reviewers indicated there was no new information on the species, or that the species was presumed extirpated or extinct from their respective State(s) (USFWS 2017, pp. 8–9).

The green blossom was described in 1865, with no type locality given for the species. However, all historical records indicate the species was restricted to the upper headwater tributary streams of the Tennessee River above Knoxville (USFWS 1983, pp. 1–2). The recovery plan described the green blossom as a medium-sized mussel with a lifespan up to 50 years. The shell outline was irregularly ovate, elliptical, or obovate. The green blossom was a sexually dimorphic, medium-sized species. Females were generally larger than the males and possessed a large, flattened, rounded swelling or expansion that extends from the middle of the base to the upper part of the posterior end. A comprehensive description of shell anatomy is provided in our 5-year review and supporting documents (Parmalee and Bogan 1998, pp. 104–107).

The green blossom was always extremely rare and never had a wide distribution (USFWS 1984, p. 9). Freshwater mussels found within the Cumberland rivers and tributary streams, such as the green blossom, are most often observed in clean, fast-flowing water in substrates that contain relatively firm rubble, gravel, and sand substrates swept free from siltation (USFWS 1984, p. 5). They are typically found buried in substrate in shallow riffle and shoal areas. This type of habitat has been nearly eliminated by impoundment of the Tennessee and Cumberland Rivers and their headwater tributary streams (USFWS 1984, p. 9).

The genus *Epioblasma* as a whole has suffered extensively because members of this genus are riverine, typically found only in streams that are shallow with sandy-gravel substrate and rapid currents (Stansbery 1972, pp. 45–46). Eight species of *Epioblasma* were presumed extinct at the time of the recovery plan, primarily due to impoundments, siltation, and pollution (USFWS 1984, p. 6).

Stream impoundment affects species composition by eliminating those species not capable of adapting to reduced flows and altered temperatures. Tributary dams typically have storage impoundments with cold water discharges and sufficient storage volume to cause the stream below the dam to differ significantly from pre-impoundment conditions. These hypolimnial discharges result in altered temperature regimes, extreme water level fluctuations, reduced turbidity, seasonal oxygen deficits, and high concentrations of certain heavy metals (TVA 1980, entire).

Siltation within the range of the green blossom, resulting from strip mining, coal washing, dredging, farming, and road construction, also likely severely affected the species. Since most freshwater mussels are riverine species that require clean, flowing water over stable, silt-free rubble, gravel, or sand shoals, smothering caused by siltation can be detrimental. The recovery plan indicated that siltation associated with poor agricultural practices and deforestation was probably the most significant factor impacting mussel communities (Fuller 1977, as cited in USFWS 1984, p. 12). The recovery plan also documented numerous coal operations within the range of the green blossom that have caused increased silt runoff, including in the Clinch River, where the last live specimen was collected in 1982 (USFWS 1984, pp. 12–13). Pollution, primarily from wood pulp, paper mills, and other industries, has also severely impacted many streams within the historical range of the species.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to the Species Detectability section for the flat pigtoe above for the descriptions of these factors. The green blossom was a medium-sized mussel most often found buried in substrate in shallow riffle and shoal areas. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish.

Survey Effort

As of 1984, freshwater mussel surveys by numerous individuals had failed to document any living populations of green blossom in any Tennessee River tributary other than the Clinch River. The recovery plan cites several freshwater mussel surveys (which took place between 1972 and 2005) of the Powell River; North, South, and Middle Forks of the Holston River; Big Moccasin Creek; Copper Creek; Nolichucky River; and French Broad River, all of which failed to find living or freshly dead green blossom specimens (USFWS 1984, p. 5). Annual surveys continue to be conducted in the Clinch River since 1972. Biologists conducting those surveys have not reported live or freshly dead individuals of the green blossom (Ahlstedt *et al.* 2016, entire; Ahlstedt *et al.* 2017, entire; Jones *et al.* 2014, entire; Jones *et al.* 2018, entire).

Time Since Last Detection

The last known record for the green blossom was a live individual collected in 1982, in the Clinch River at Pendleton Island, Virginia.

III. Analysis

Habitat within the historical range of the green blossom has been significantly altered by water impoundments, siltation, and pollution, including at Pendleton Island on the Clinch River, the site of the last known occurrence of the species (Jones *et al.* 2018, pp. 36–56). The last known collection of the species was 38 years ago, and numerous surveys have been completed within the known range of the species over these 38 years. Although other federally listed mussels have been found by these experts during these surveys, no live or freshly dead specimens of the green blossom have been found (Ahlstedt *et al.* 2016, pp. 1–18; Ahlstedt *et al.* 2017, pp. 213–225). Mussel experts conclude that the species is likely to be extinct.

IV. Conclusion

We conclude the green blossom is extinct and, therefore, should be delisted. This conclusion is based on lack of detections during surveys and searches conducted throughout the species' range since the green blossom was last observed in 1982, and the amount of significant habitat alteration that has occurred within the range of the species, rendering most of the species' historical habitat unlikely to support the species.

Tubercled Blossom (Epioblasma torulosa torulosa)

I. Background

The tubercled blossom (pearly mussel), *Epioblasma torulosa torulosa,* was listed as endangered on June 14, 1976 (41 FR 24062), and the final recovery plan was completed on January 25, 1985. At the time of listing, the greatest factor contributing to the species' decline was the alteration and destruction of stream habitat due to impoundments. Two 5-year reviews were completed in 1991 (initiated on November 6, 1991; see 56 FR 56882) and 2011 (initiated on September 20, 2005; see 70 FR 55157); both reviews recommended the species maintain its endangered status, although the 2011 review did conclude the species was likely extinct. The most recent 5-year review was completed in 2017 (initiated on March 25, 2014; see 79 FR 16366), indicated that the species was presumed extinct, and recommended delisting. The Service solicited peer review from three peer reviewers for the 2017 5-year review from Federal and State biologists with known expertise and interest in blossom pearly mussels (the tubercled blossom was one of four species assessed in this 5-year review). All three peer reviewers indicated there was no new information on the species, all populations of the species were extirpated from their respective States, and the species was presumed extinct.

The tubercled blossom was described as *Amblema torulosa* from the Ohio and Kentucky Rivers (Rafinesque 1820; referenced in USFWS 1985, p. 2). All records for this species indicate it was widespread in the larger rivers of the eastern United States and southern Ontario, Canada (USFWS 1985, p. 2). Records for this species included the Ohio, Kanawha, Scioto, Kentucky, Cumberland, Tennessee, Nolichucky, Elk, and Duck Rivers (USFWS 1985, pp. 3–6). Historical museum records gathered subsequently add the Muskingum, Olentangy, Salt, Green, Barren, Wabash, White, East Fork White, and Hiwassee Rivers to its range (Service 2011, p. 5). The total historical range includes the States of Alabama, Illinois, Indiana, Kentucky, Ohio, Tennessee, and West Virginia. This species was abundant in archaeological sites along the Tennessee River in extreme northwestern Alabama, making it likely that the species also occurred in adjacent northeastern Mississippi where the Tennessee River borders that State (Service 2011, p. 5).

The tubercled blossom was medium-sized, reaching about 3.6 inches (9.1 centimeters) in shell length, and could live as long as 50 years or more. The shell was irregularly egg-shaped or elliptical, slightly sculptured, and corrugated with distinct growth lines. The outer surface was smooth and shiny; was tawny, yellowish-green, or straw-colored; and usually had numerous green rays (Parmalee and Bogan 1980, pp. 22–23).

The genus *Epioblasma* as a whole has suffered extensively because members of this genus are characteristic riffle or shoal species, typically found only in streams that are shallow with sandy-gravel substrate and rapid currents (Parmalee and Bogan 1980, pp. 22–23). Eight species of *Epioblasma* were presumed extinct at the time of the 1985 recovery plan. The elimination of these species has been attributed to impoundments, barge canals, and other flow alteration structures that have eliminated riffle and shoal areas (USFWS 1985, p. 1).

The single greatest factor contributing to the decline of the tubercled blossom is the alteration and destruction of stream habitat due to impoundments for flood control, navigation, hydroelectric power production, and recreation. Siltation is another factor that has severely affected the tubercled blossom. Increased silt transport into waterways due to strip mining, coal washing, dredging, farming, logging, and road construction increased turbidity and consequently reduced the depth of light penetration and created a blanketing effect on the substrate. The 1985 recovery plan documented numerous coal operations within the range of the tubercled blossom that were causing increased silt runoff. A third factor is the impact caused by various pollutants. An increasing number of streams throughout the blossom's range receive municipal, agricultural, and industrial waste discharges.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to the Species Detectability section for the flat pigtoe above for the descriptions of these factors. The tubercled blossom was a large-river species most often found inhabiting parts of those rivers that are shallow with sandy-gravel substrate and rapid currents. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish.

Survey Effort

All three rivers where the species was last located have been extensively sampled in the intervening years without further evidence of this species' occurrence, including Kanawha River, Nolichucky River, and Green River (Service 2011, p. 5).

Based on this body of survey information in large rivers in the Ohio River system, investigators have been considering this species as possibly extinct since the mid-1970s. Probably the best reach of potential habitat remaining may be in the lowermost 50 miles of the free-flowing portion of the Ohio River, in Illinois and Kentucky. This reach is one of the last remnants of large-river habitat remaining in the entire historical range of the tubercled blossom. In our 2011 5-year review for the tubercled blossom, we hypothesized that this mussel might be found in this stretch of the Ohio River. Unfortunately, mussel experts have not reported any new collections of the species (USFWS 2017, p. 8). Additionally, State biologists have conducted extensive

surveys within the Kanawha Falls area of the Kanawha River since 2005, and have found no evidence that the tubercled blossom still occurs there (USFWS 2017, p. 4). This species is presumed extirpated.

Time Since Last Detection

The last individuals were collected live or freshly dead in 1969, in the Kanawha River, West Virginia, below Kanawha Falls; in 1968, in the Nolichucky River, Tennessee; and in 1963, in the Green River, Kentucky.

III. Analysis

The tubercled blossom has not been seen since 1969, despite extensive survey work in nearly all of the rivers of historical occurrence, prompting many investigators to consider this species as possibly extinct. According to the last two 5-year reviews, experts indicate that the species is presumed extinct throughout its range.

IV. Conclusion

We conclude the tubercled blossom is extinct and, therefore, should be delisted. This conclusion is based on the lack of detections during surveys and searches conducted throughout the species' range since the tubercled blossom was last sighted in 1969, and the significant habitat alteration that has occurred within the range of the species, rendering most of the species' habitat unable to support the life-history needs of the species.

Turgid Blossom (Epioblasma turgidula)

I. Background

The turgid blossom (pearly mussel), *Epioblasma turgidula,* was listed as endangered on June 14, 1976 (41 FR 24062), and the final recovery plan was completed on January 25, 1985 (USFWS 1985). At the time of listing, the single greatest factor contributing to the species' decline was the alteration and destruction of stream habitat due to impoundments. Two 5-year reviews were completed in 2007 (initiated on September 20, 2005; see 70 FR 55157) and 2017 (initiated on August 30, 2016; see 81 FR 59650); both reviews recommended delisting due to extinction. The Service solicited peer review from eight peer reviewers for the 2017 5-year review from Federal and State biologists with known expertise and interest in blossom pearly mussels (the turgid blossom was one of four species assessed in this 5-year review). All eight peer reviewers indicated there was no new information on the species, all populations of the species were extirpated from their respective States, and the species was presumed extinct.

The turgid blossom was described (Lea 1858; referenced in USFWS 1985, p. 2) as *Unio turgidulus* from the Cumberland River, Tennessee, and the Tennessee River, Florence, Alabama. According to the recovery plan, this species was historically relatively widespread with a disjunct distribution occurring in both the Cumberlandian and Ozarkian Regions (USFWS 1985, p. 7). It has been reported from the Tennessee River and tributary streams including Shoal and Bear Creeks, and Elk, Duck, Holston, Clinch, and Emory Rivers (Ortmann 1918, 1924, 1925; Stanberry 1964, 1970, 1971, 1976a; Johnson 1978, as cited in USFWS 2017, entire). Additional records are reported from the Cumberland River (Ortmann 1918; Clench and van der Schalie 1944; Johnson 1978, as cited in USFWS 2017, entire) and from the Ozark Mountain Region, including Spring Creek, and Black and White Rivers (Simpson 1914; Johnson 1978, as cited in USFWS 2017, entire).

The turgid blossom was a medium-river, Cumberlandian-type mussel that was also reported from the Ozarks. These mussels could live as long as 50 years or more. The species was strongly dimorphic; males and females differed in shape and structure. This species seldom exceeded 1.6 inches (4.1 centimeters) in shell length. Shells of the male tended to be more elliptical or oval, while females tended to be more rounded. Valves were inequilateral, solid, and slightly inflated. The outer shell was shiny yellowish-green with numerous fine green rays over the entire surface. The shell surface was marked by irregular growth lines that are especially strong on females. The inner shell surface was bluish-white (Parmalee and Bogan 1980, pp. 22–23).

The genus *Epioblasma* as a whole has suffered extensively because members of this genus are characteristic riffle or shoal species, typically found only in streams that are shallow with sandy-gravel substrate and rapid currents (Parmalee and Bogan 1980, pp. 22–23). Eight species of *Epioblasma* were presumed extinct at the time of the 1985 recovery plan. The elimination of these species has been attributed to impoundments, barge canals, and other flow alteration structures that have eliminated riffle and shoal areas (USFWS 1985, p. 1). The last known population of the turgid blossom occurred in the Duck River and was collected in 1972, at Normandy (Ahlstedt 1980, pp. 21–23). Field notes associated with this collection indicate that it was river-collected 100 yards above an old iron bridge. Water at the bridge one mile upstream was very muddy, presumably from dam construction above the site (Ahlstedt *et al.* 2017, entire). Additionally, surveys in the 1960s of the upper Cumberland Basin indicated an almost total elimination of the genus *Epioblasma,* presumably due to mine wastes (Neel and Allen 1964, as cited in USFWS 1985, p. 10).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to the Species Detectability section for the flat pigtoe above for the descriptions of these factors. The turgid blossom was a small-sized mussel most often found buried in substrate in shallow riffle and shoal areas. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish.

Survey Effort

This species has not been found in freshwater mussel surveys conducted on the Duck River since the time of the Normandy Dam construction (Ahlstedt 1980, pp. 21–23), nor has it been reported from any other stream or river system. The most recent 5-year review notes that the Tennessee Wildlife Resources Agency had completed or funded surveys (1972–2005) for blossom pearly mussels in the Cumberland, Tennessee, Clinch, Duck, Elk, Emory, Hiwassee, Little, and Powell Rivers, yet there were no recent records of turgid blossom (USFWS 2017, p. 4). Surveys in the Ozarks have not observed the species since the early 1900s (USFWS 1985, p. 7).

Time Since Last Detection

The last known collection of the turgid blossom was a freshly dead specimen found in the Duck River, Tennessee, in 1972 by a biologist with the TVA. The species has not been seen in the Ozarks since the early 1900s (USFWS 1985, p. 7).

III. Analysis

Habitat within the historical range of the turgid blossom has been significantly altered by water impoundments, siltation, and pollution. The last known collection of the species was more than 45 years ago. Mussel experts conclude that the species is likely to be extinct. Numerous surveys have been completed within the known range of the species over the years. Although other federally listed mussels have been found by experts during these

surveys, no live or freshly dead specimens of the turgid blossom have been found.

IV. Conclusion

We conclude the turgid blossom is extinct and, therefore, should be delisted. This conclusion is based on the lack of detections during surveys and searches conducted throughout the species' range since the turgid blossom was last sighted in 1972, and the significant habitat alteration that occurred within the range of the species, rendering most of the species' habitat unlikely to support the species.

Yellow Blossom (Epioblasma florentina florentina)

I. Background

The yellow blossom (pearly mussel), *Epioblasma florentina florentina,* was listed as endangered on June 14, 1976 (41 FR 24062), and the final recovery plan was completed on January 25, 1985. At the time of listing, the single greatest factor contributing to the species' decline was the alteration and destruction of stream habitat due to impoundments. Two 5-year reviews were completed in 2007 (initiated on September 20, 2005; see 70 FR 55157) and 2017 (initiated on March 25, 2014; see 79 FR 16366); both reviews recommended delisting due to extinction. The Service solicited peer review from eight peer reviewers for the 2017 5-year review from Federal and State biologists with known expertise and interest in blossom pearly mussels (the yellow blossom was one of four species assessed in this 5-year review). All eight peer reviewers indicated there was no new information on the species, all populations of the species were extirpated from their respective States, and the species was presumed extinct.

The yellow blossom was described (Lea 1857; referenced in USFWS 1985, pp. 2–3) as *Unio florentinus* from the Tennessee River, Florence and Lauderdale Counties, Alabama, and the Cumberland River, Tennessee. According to the recovery plan, this species was a Cumberlandian-type mussel historically widespread in the Tennessee and Cumberland Rivers and tributaries to the Tennessee River. The yellow blossom was reported from Hurricane, Limestone, Bear, and Cypress Creeks, all tributary streams to the Tennessee River in northern Alabama (Ortmann 1925 p. 362; Bogan and Parmalee 1983, p. 23). This species was also reported from larger tributary streams of the lower and upper Tennessee River, including the Flint, Elk, and Duck Rivers (Isom *et al.* 1973, p. 439; Bogan and Parmalee 1983, pp. 22–23) and the Holston, Clinch, and Little Tennessee Rivers (Ortmann 1918, pp. 614–616). Yellow blossoms apparently occurred throughout the Cumberland River (Wilson and Clark 1914, p. 46; Ortmann 1918, p. 592; Neel and Allen 1964, p. 448).

The yellow blossom seldom achieved more than 2.4 inches (6 centimeters) in length. The slightly inflated valves were of unequal length, and the shell surface was marked by uneven growth lines. The shell was a shiny honey-yellow or tan with numerous green rays uniformly distributed over the surface. The inner shell surface was bluish-white (Bogan and Parmalee 1983, pp. 22–23).

The genus *Epioblasma* as a whole has suffered extensively because members of this genus are characteristic riffle or shoal species, typically found only in streams that are shallow with sandy-gravel substrate and rapid currents (Bogan and Parmalee 1983, pp. 22–23). Eight species of *Epioblasma* were presumed extinct at the time of the 1985 recovery plan. The elimination of these species has been attributed to impoundments, barge canals, and other flow alteration structures that have eliminated riffle and shoal areas (USFWS 1985, p. 1).

The single greatest factor contributing to the decline of the yellow blossom, not only in the Tennessee Valley but in other regions as well, is the alteration and destruction of stream habitat due to impoundments for flood control, navigation, hydroelectric power production, and recreation. Siltation is another factor that has severely affected the yellow blossom. Increased silt transport into waterways due to strip mining, coal washing, dredging, farming, logging, and road construction increased turbidity and consequently reduced light penetration, creating a blanketing effect on the substrate. The 1985 recovery plan documented numerous coal operations within the range of the yellow blossom. A third factor is the impact caused by various pollutants. An increasing number of streams throughout the mussel's range receive municipal, agricultural, and industrial waste discharges (USFWS 2017, p. 5).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to the Species Detectability section for the flat pigtoe above for the descriptions of these factors. The yellow blossom was a small-sized mussel most often found buried in substrate in shallow riffle and shoal areas. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish.

Survey Effort

Since the last recorded collections in the mid-1960s, numerous mussel surveys (1872–2005) have been done by mussel biologists from the TVA, Virginia Tech, U.S. Geological Survey, and others in rivers historically containing the species. Biologists conducting those surveys have not reported live or freshly dead individuals of the yellow blossom.

Time Since Last Detection

This species was last collected live from Citico Creek in 1957, and the Little Tennessee River in the 1966 (Bogan and Parmalee, 1983, p. 23), and archeological shell specimens were collected from the Tennessee and Cumberland Rivers between 1976–1979 (Parmalee *et al.* 1980, entire).

III. Analysis

Habitat within the historical range of the yellow blossom has been significantly altered by water impoundments, siltation, and pollution. The last known collection of the species was over 50 years ago. Mussel experts conclude that the species is likely to be extinct. Numerous surveys have been completed within the known range of the species over the years. Although other federally listed mussels have been found by these experts during these surveys, no live or freshly dead specimens of the yellow blossom have been found.

IV. Conclusion

We conclude the yellow blossom is extinct and, therefore, should be delisted. This conclusion is based on lack of detections during surveys conducted throughout the species' range since the yellow blossom was last sighted in the mid-1960s and on the significant habitat alteration that occurred within the range of the species, rendering most of the species' habitat unlikely to support the species.

Plants

Phyllostegia glabra var. lanaiensis

I. Background

Phyllostegia glabra var. *lanaiensis* was listed as endangered on September 20, 1991 (56 FR 47686), and was included in the Lanai plant cluster recovery plan in 1995 (USFWS 1995).

At the time of listing, no wild individuals had been seen since 1914, although there was one questionable sighting from the 1980s that was later considered to be *P. glabra* var. *glabra* (USFWS 1995; 2012). Threats included habitat degradation and herbivory by feral ungulates, the establishment of ecosystem-altering invasive plant species, and the consequences of small population sizes (low numbers) (USFWS 1995). In 2000, designation of critical habitat was considered not prudent for *P. glabra* var. *lanaiensis* because this plant had not been observed in the wild in over 20 years and no viable genetic material was available for recovery efforts (65 FR 82086; December 27, 2000). Two 5-year status reviews have been completed; the 2012 review (initiated on April 8, 2010; see 75 FR 17947) recommended surveys within the historical range and within suitable habitat on Lanai, with no change in status. Despite repeated surveys of historical and suitable habitat by botanists since 2006, *P. glabra* var. *lanaiensis* has not been found (Plant Extinction Prevention Program (PEPP) 2012; Oppenheimer 2019, in litt.). In 2012, PEPP reported that *P. glabra* var. *lanaiensis* was likely extinct. The 5-year status review completed in 2019 (initiated on February 12, 2016; see 81 FR 7571) recommended delisting due to extinction.

Historically, *P. glabra* var. *lanaiensis* was known from only two collections from Lanai, one from the ''mountains of Lanai,'' and the other from Kaiholena Gulch, where it was last collected in 1914 (USFWS 1991, 1995, 2003; Wagner 1999; Hawaii Biodiversity and Mapping Program 2010). A report of this species from the early 1980s in a gulch feeding into the back of Maunalei Valley probably was erroneous and likely *P. glabra* var. *glabra* (USFWS 1995, 2003; Wagner 1999, p. 269). Very little is known of the preferred habitat or associated species of *P. glabra* var. *lanaiensis* on the island of Lanai. It has been observed in lowland mesic to wet forest in gulch bottoms and sides, often in quite steep areas, in the same habitat as the endangered *Cyanea macrostegia* ssp. *gibsonii* (listed as *C. gibsonii*) (USFWS 1995).

Phyllostegia glabra var. *lanaiensis* was a short-lived perennial herb. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors of *P. glabra* var. *lanaiensis* remain unknown (USFWS 1995, 2003). *P. glabra* var. *lanaiensis* was described as a variety of *P. glabra* from specimens collected from Lanai by Ballieu, Munro, and Mann and Brigham. It differed from *P. glabra* var. *glabra* in its longer calyx (the collection of modified leaves that enclose the petals and other parts of a flower) (0.3 inches or 10–11 millimeters) and narrowly lanceolate leaves (Wagner *et al.* 1990, p. 816). No taxonomic changes have been made since the variety was described in 1934.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Phyllostegia glabra var. *lanaiensis* was a short-lived perennial herb. This taxon differed from the other variety by its longer calyces and narrowly lanceolate leaves, suggesting that flowers should be present in order to confirm identification. Most congeners tend to flower year-round, with peak flowering from April through June, indicating that it would be easier to detect and confirm the species during this time period.

Survey Effort

The PEPP surveys and monitors rare plant species on Lanai; botanical surveys are conducted on a rotational basis, based on the needs for collections and monitoring. Opportunistic surveying is also conducted when botanists are within the known range and suitable habitat when other work brings them to that area. No observations of *P. glabra* var. *lanaiensis* have been reported since 1914. By 2012, PEPP determined that this variety was likely extirpated (PEPP 2012), with very little chance of rediscovery due to the restricted known range, thorough search effort, and extent of habitat degradation. However, botanists were still searching for this taxon on any surveys in or near its last known location and other suitable habitat, as recently as January 2019 (Oppenheimer 2019, in litt.).

Time Since Last Detection

All *P. glabra* identified since 1914 have been determined to be *P. glabra* var. *glabra,* and, therefore, *P. glabra* var. *lanaiensis* has not been detected since 1914.

III. Analysis

Threats to the species included habitat degradation and herbivory by feral ungulates, the establishment of ecosystem-altering invasive plant species, and the consequences of small population sizes. Despite repeated surveys of historical and suitable habitat by botanists from 2006 through 2019, *P. glabra* var. *lanaiensis* has not been found since 1914 (PEPP 2012; Oppenheimer 2019, in litt.). In 2012, PEPP reported that *P. glabra* var. *lanaiensis* was likely extinct. In 2019, the species was included on the list of possibly extinct Hawaiian vascular plant taxa (Wood *et al.* 2019).

IV. Conclusion

At the time of listing in 1991, *P. glabra* var. *lanaiensis* had not been detected in over 75 years. Since its last detection in 1914, botanical surveys have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;
(2) Use the active voice to address readers directly;
(3) Use clear language rather than jargon;
(4) Be divided into short sections and sentences; and
(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-To-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994

(Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. The Seminole Tribe of Florida and the Miccousukee Tribe has expressed interest in the Bachman's warbler. We have reached out to these tribes by providing an advance notification prior to the publication of the proposed rule. We will continue to work with these and any other Tribal entities that expressed interest in these species during the development of a final rule to delist these species.

References Cited

Lists of the references cited in in this document are available on the internet at *http://www.regulations.gov* in the dockets provided above under *Public Comments* and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Branch of Delisting and Foreign Species, Ecological Services Program, as well as the staff of the Ecological Services Field Offices as specified under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife:
■ a. Under MAMMALS, by removing the entry for ''Bat, little Mariana fruit'';
■ b. Under BIRDS, by removing the entries for ''Akepa, Maui'', ''Akialoa, Kauai'', ''Creeper, Molokai'', ''Nukupuu, Kauai'', ''Nukupuu'', Maui'', '' 'O'o, Kauai (honeyeater)'', ''Po'ouli (honeycreeper)'', ''Thrush, large Kauai'', ''Warbler (wood), Bachman's'', ''White-eye, bridled'', and ''Woodpecker, ivory-billed'';
■ c. Under FISHES, by removing the entries for ''Gambusia, San Marcos'' and ''Madtom, Scioto''; and
■ d. Under CLAMS, by removing the entries for ''Acornshell, southern'' and ''Blossom, green''; both entries for ''Blossom, tubercled'', ''Blossom, turgid'', and ''Blossom, yellow''; and the entries for ''Combshell, upland'', ''Pigtoe, flat'', and ''Stirrupshell''.

§ 17.12 [Amended]

■ 3. Amend § 17.12(h), the List of Endangered and Threatened Plants, under FLOWERING PLANTS, by removing the entry for ''*Phyllostegia glabra* var. *lanaiensis*''.

§ 17.85 [Amended]

■ 4. Amend § 17.85(a) by:
■ a. In the heading, removing the word ''*Seventeen*'' and adding in its place the word ''*Fourteen*'';
■ b. In the table, removing the entries for ''tubercled blossom (pearly mussel)'', ''turgid blossom (pearly mussel)'', and ''yellow blossom (pearly mussel)'';
■ c. In paragraph (a)(1)(i), by removing the number ''17'' and adding in its place the number ''14'';
■ d. In paragraph (a)(1)(ii), by removing the number ''17'' and adding in its place the number ''14''; and
■ e. In paragraph (a)(2)(iii), by removing the number ''17'' and adding in its place the number ''14''.

§ 17.95 [Amended]

■ 4. Amend § 17.95 by:
■ a. In paragraph (e), removing the entry for ''San Marcos Gambusia (*Gambusia georgei*)''; and
■ b. In paragraph (f), the entry for, ''Eleven Mobile River Basin Mussel Species: Southern Acornshell (*Epioblasma othcaloogensis*), Ovate Clubshell (*Pleurobema perovatum*), Southern Clubshell (*Pleurobema decisum*), Upland Combshell (*Epioblasma metastriata*), Triangular Kidneyshell (*Ptychobranchus greenii*), Alabama Moccasinshell (*Medionidus acutissimus*), Coosa Moccasinshell (*Medionidus parvulus*), Orange-nacre Mucket (*Lampsilis perovalis*), Dark Pigtoe (*Pleurobema furvum*), Southern Pigtoe (*Pleurobema georgianum*), and Fine-lined Pocketbook (*Lampsilis altilis*)'', revising the entry's heading, the first sentence of the introductory text of paragraph (f)(1), the introductory text of paragraph (f)(2)(i), the table at paragraph (f)(2)(ii), the introductory text of paragraph (f)(2)(xiv), paragraph (f)(2)(xiv)(B), the introductory text of paragraph (f)(2)(xv), paragraph (f)(2)(xv)(B), the introductory text of paragraph (f)(2)(xx), paragraph (f)(2)(xx)(B), the introductory text of paragraph (f)(2)(xxi), paragraph (f)(2)(xxi)(B), the introductory text of paragraph (f)(2)(xxiii), paragraph (f)(2)(xxiii)(B), the introductory text of paragraph (f)(2)(xxvi), paragraph (f)(2)(xxvi)(B), the introductory text of paragraph (f)(2)(xxvii), paragraph (f)(2)(xxvii)(B), the introductory text of paragraph (f)(2)(xxviii), and paragraph (f)(2)(xxviii)(B) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Nine Mobile River Basin Mussel Species: Ovate clubshell (*Pleurobema perovatum*), southern clubshell (*Pleurobema decisum*), triangular kidneyshell (*Ptychobranchus greenii*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), orange-nacre mucket (*Lampsilis perovalis*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), and fine-lined pocketbook (*Lampsilis altilis*)

(1) The primary constituent elements essential for the conservation of the ovate clubshell (*Pleurobema perovatum*), southern clubshell (*Pleurobema decisum*), triangular kidneyshell (*Ptychobranchus greenii*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), orange-nacre mucket (*Lampsilis perovalis*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), and fine-lined pocketbook (*Lampsilis altilis*) are those habitat components that support feeding, sheltering, reproduction, and physical features for maintaining the natural processes that support these habitat components.

* * *

(2) * * *

(i) *Index map.* The index map showing critical habitat units in the States of Mississippi, Alabama, Georgia, and Tennessee for the nine Mobile River Basin mussel species follows:

(ii) * * *

Species	Critical habitat units	States
Ovate clubshell (*Pleurobema perovatum*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18, 19, 21, 24, 25, 26.	AL, GA, MS, TN.
Southern clubshell (*Pleurobema decisum*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 17, 18, 19, 21, 24, 25, 26.	AL, GA, MS, TN.
Triangular kidneyshell (*Ptychobranchus greenii*)	Units 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.
Alabama moccasinshell (*Medionidus acutissimus*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 25, 26	AL, GA, MS, TN.
Coosa moccasinshell (*Medionidus parvulus*)	Units 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.
Orange-nacre mucket (*Lampsilis perovalis*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15	AL, MS.
Dark pigtoe (*Pleurobema furvum*)	Units 10, 11, 12	AL.
Southern pigtoe (*Pleurobema georgianum*)	Units 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.
Fine-lined pocketbook (*Lampsilis altilis*)	Units 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.

* * * * *

(xiv) Unit 12. Locust Fork and Little Warrior Rivers, Jefferson, Blount Counties, Alabama. This is a critical habitat unit for the ovate clubshell, triangular kidneyshell, Alabama moccasinshell, orange-nacre mucket, and dark pigtoe.

* * * * *

(B) Map of Unit 12 follows:

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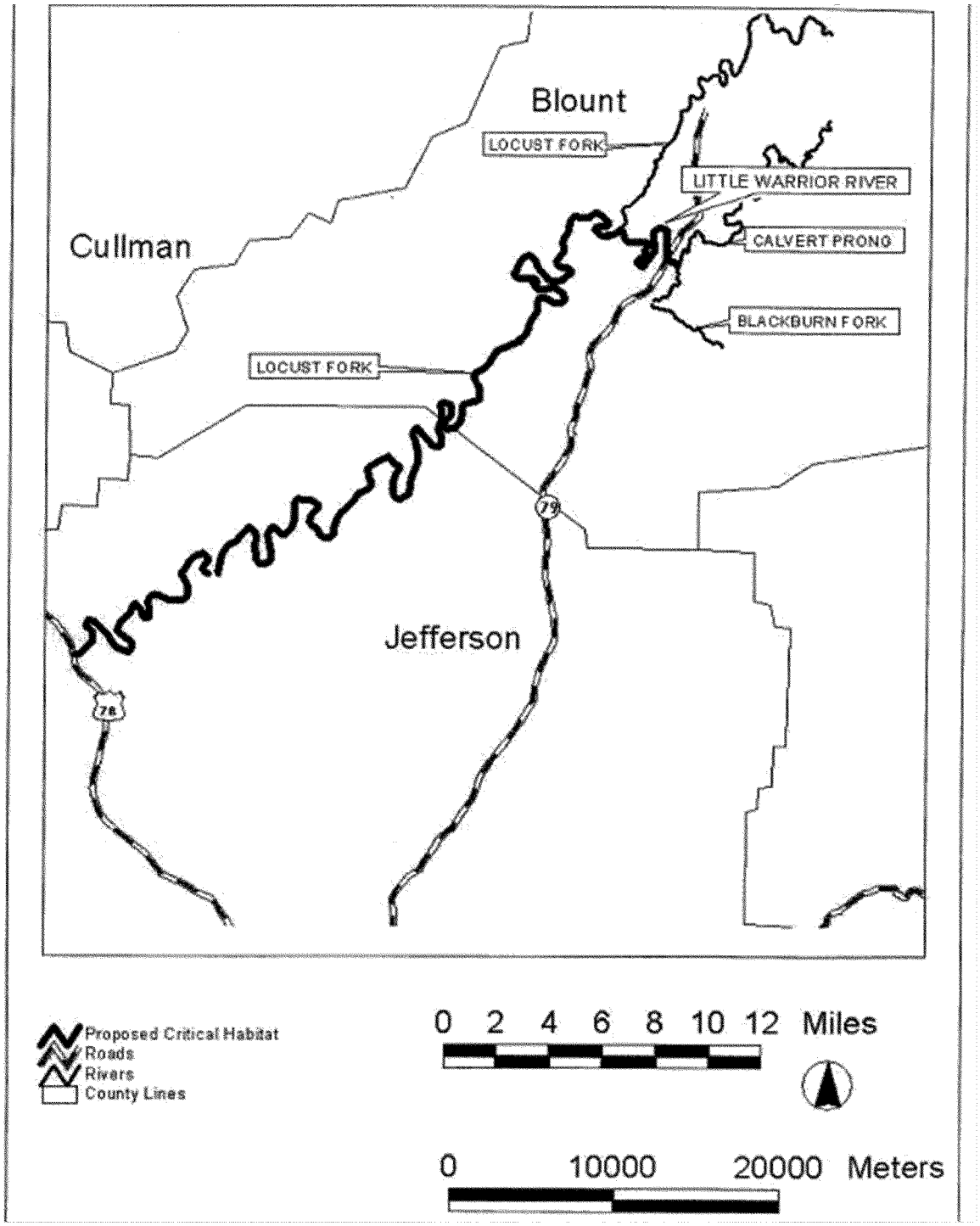
Unit 12: Ovate Clubshell, Triangular Kidneyshell, Alabama Moccasinshell, Orange-Nacre Mucket, Dark Pigtoe

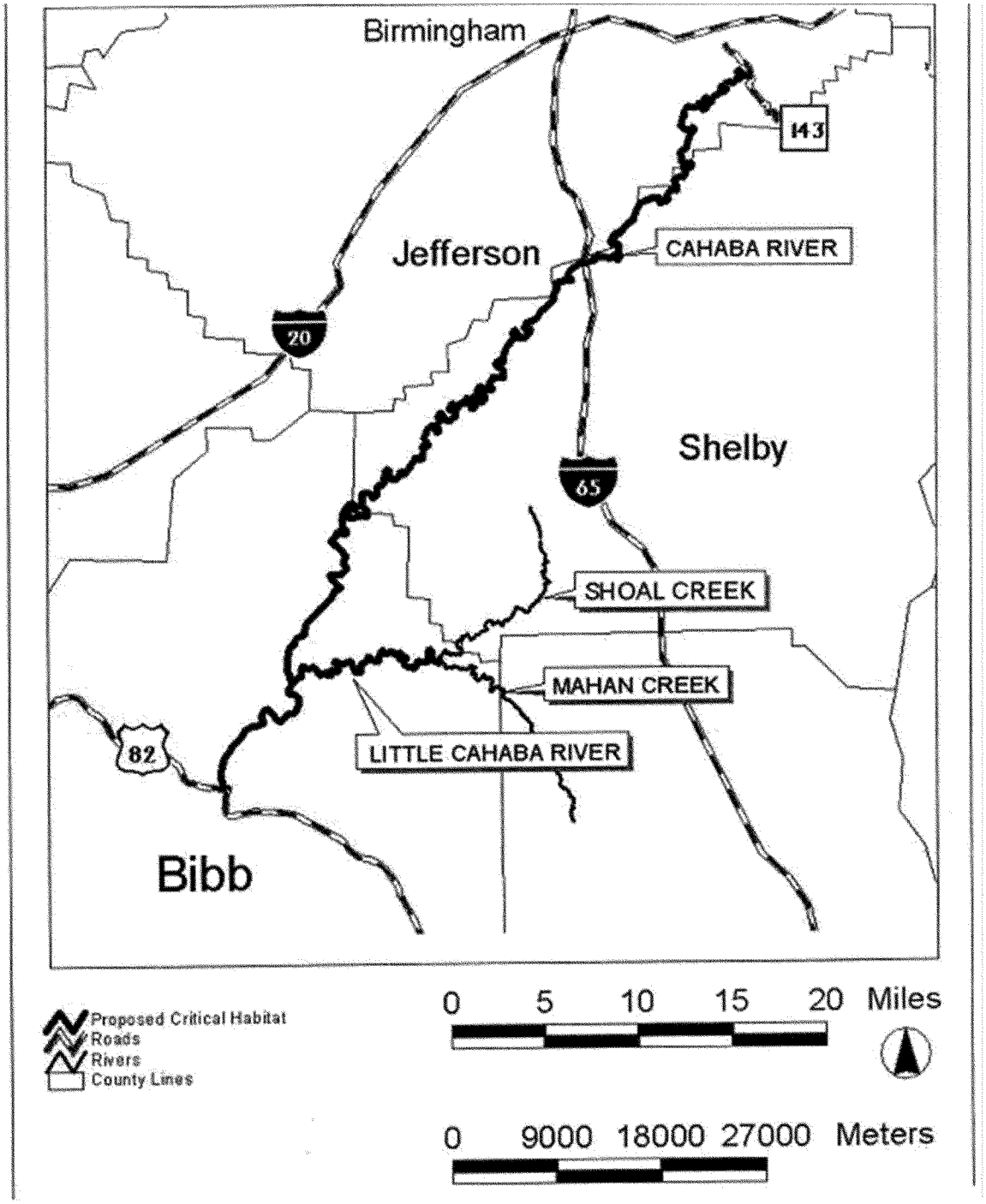


(xv) Unit 13. Cahaba River and Little Cahaba River, Jefferson, Shelby, Bibb Counties, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Alabama moccasinshell, orange-nacre mucket, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 13 follows:

Unit 13: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Alabama Moccasinshell, Orange-Nacre Mucket, Fine-Lined Pocketbook



* * * * *

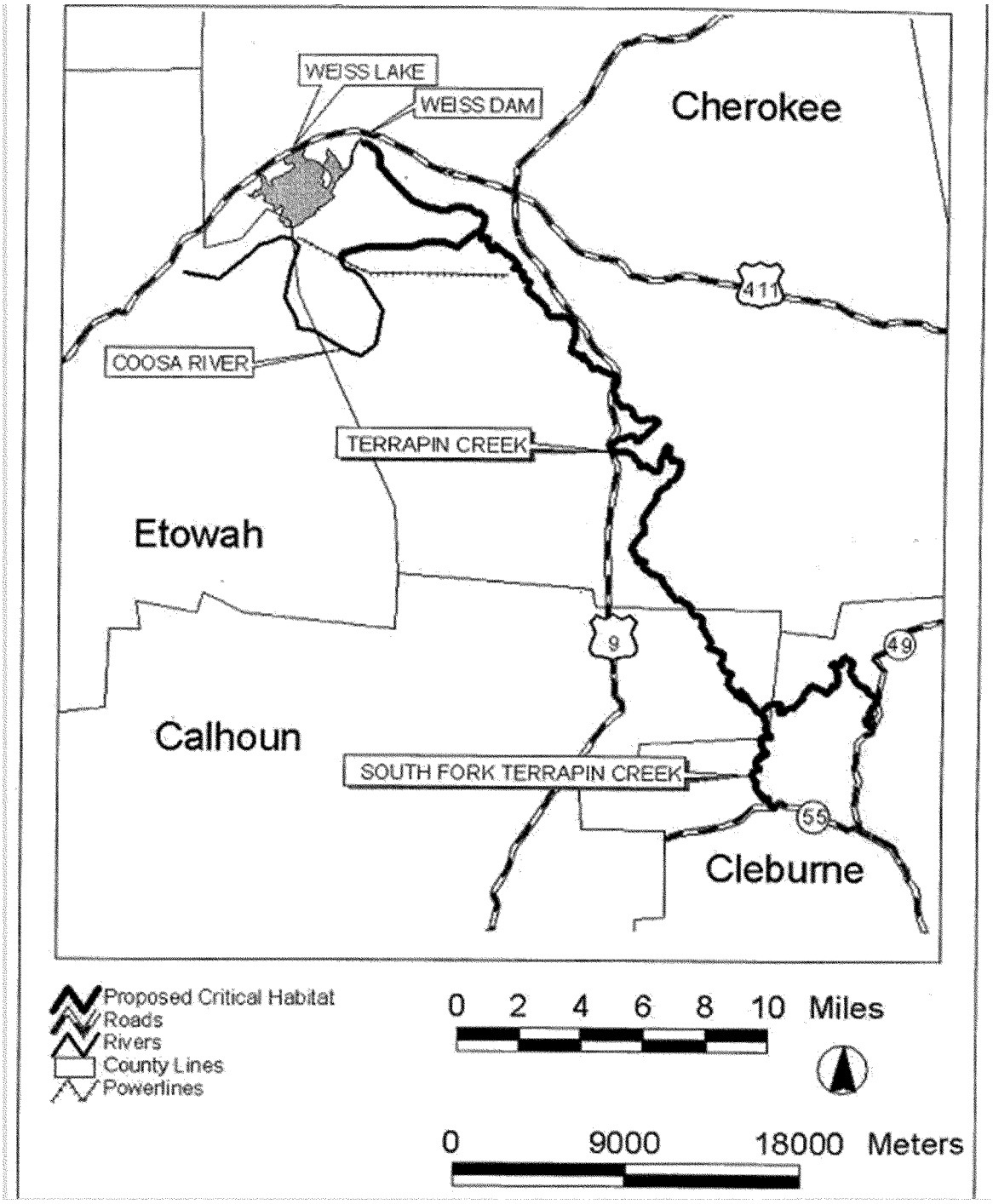
(xx) Unit 18. Coosa River (Old River Channel) and Terrapin Creek, Cherokee, Calhoun, Cleburne Counties, Alabama.

This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 18 follows:

Unit 18: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook

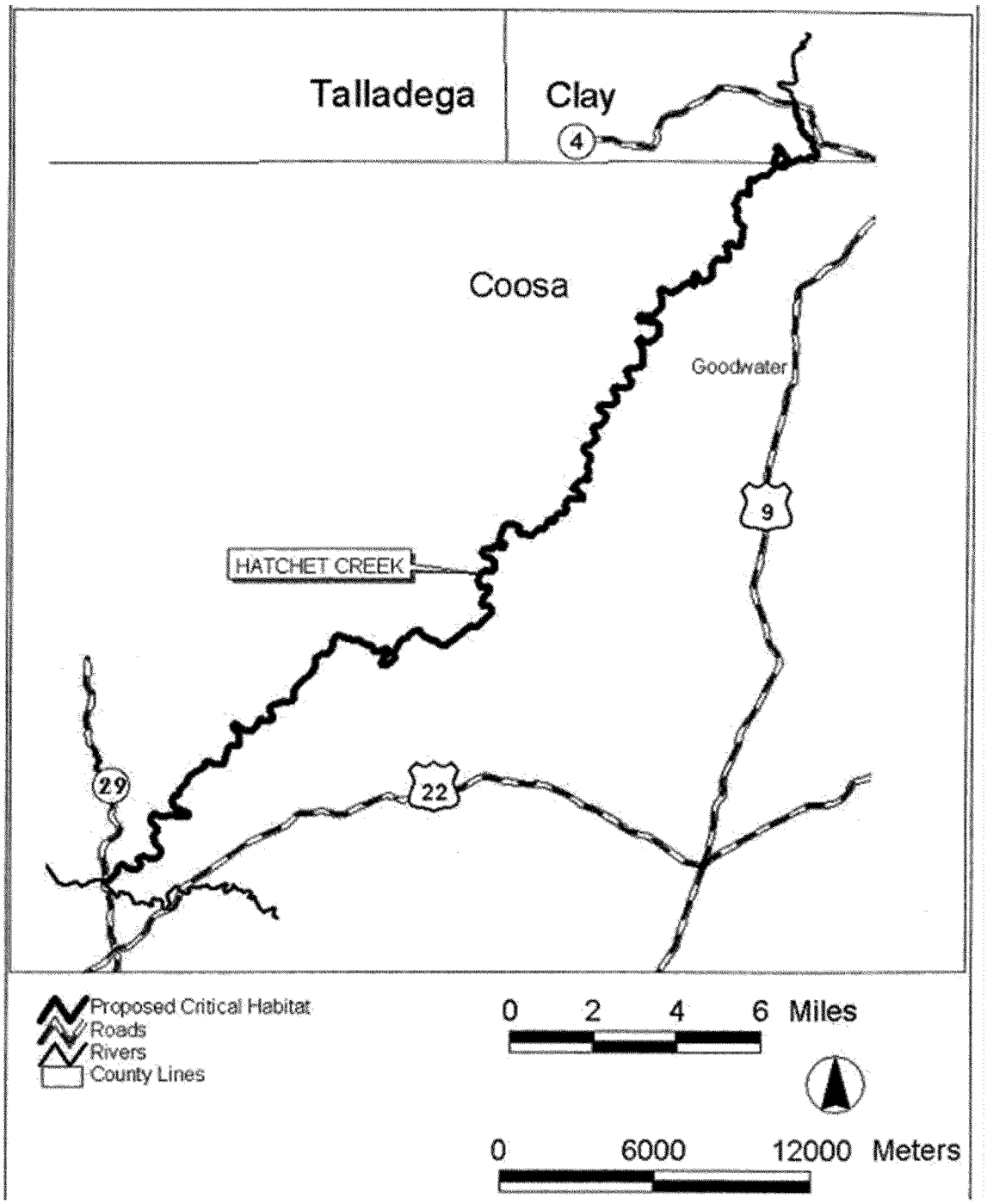


(xxi) Unit 19. Hatchet Creek, Coosa, Clay Counties, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 19 follows:

Unit 19: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook



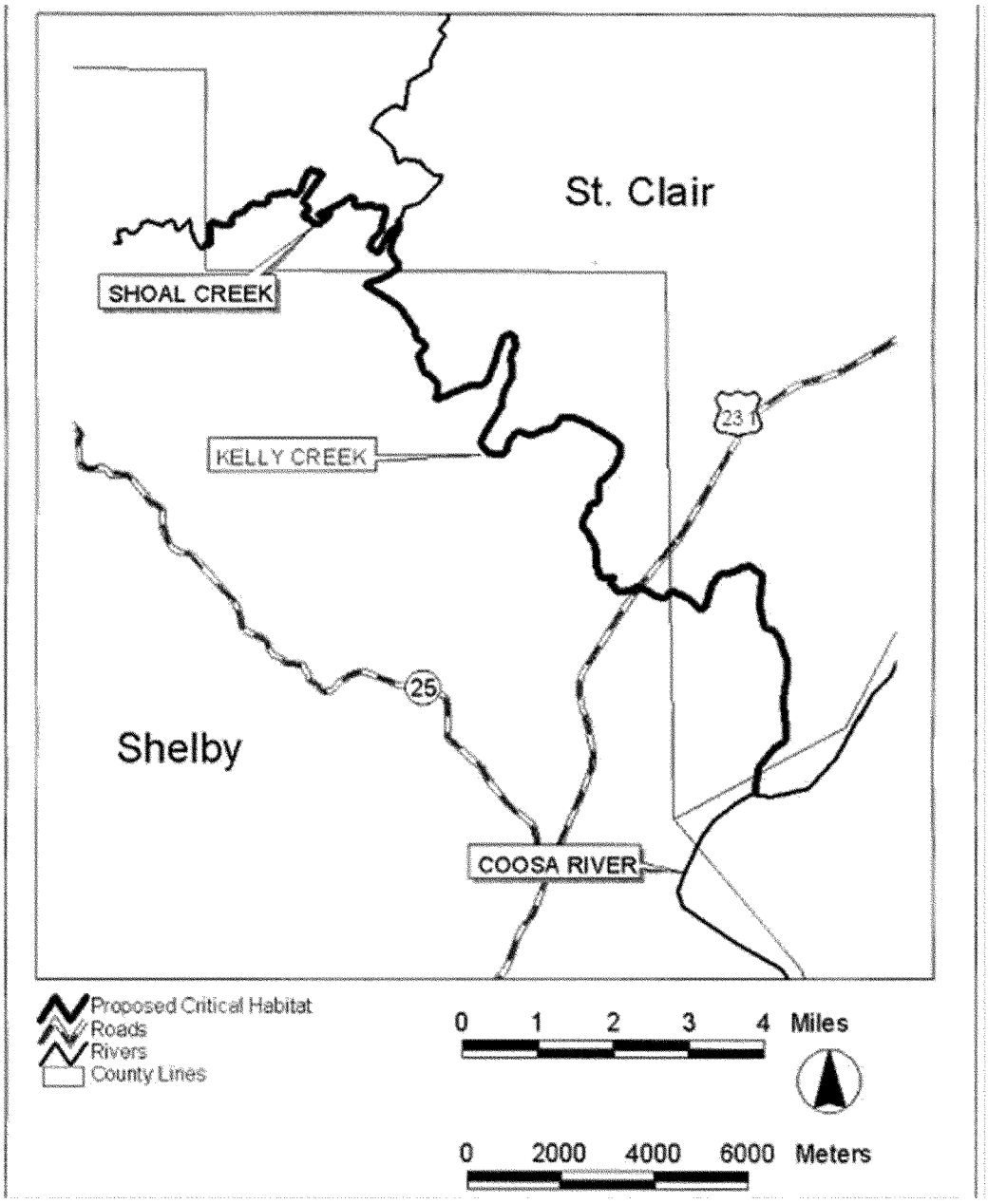
* * * * *

(xxiii) Unit 21. Kelly Creek and Shoal Creek, Shelby, St. Clair Counties, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 21 follows:

Unit 21: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook



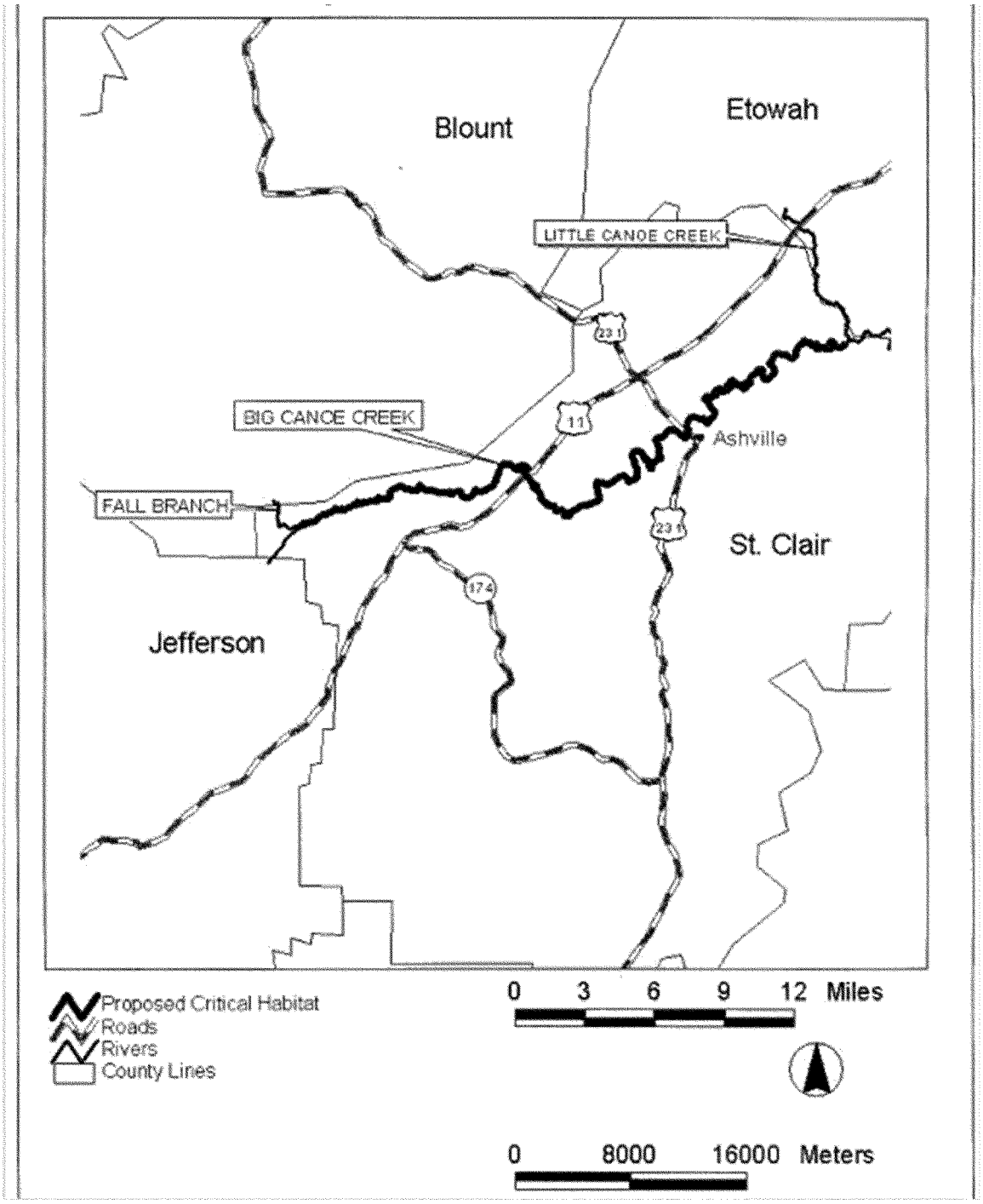
* * * * *

(xxvi) Unit 24. Big Canoe Creek, St. Clair County, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 24 follows:

Unit 24: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook

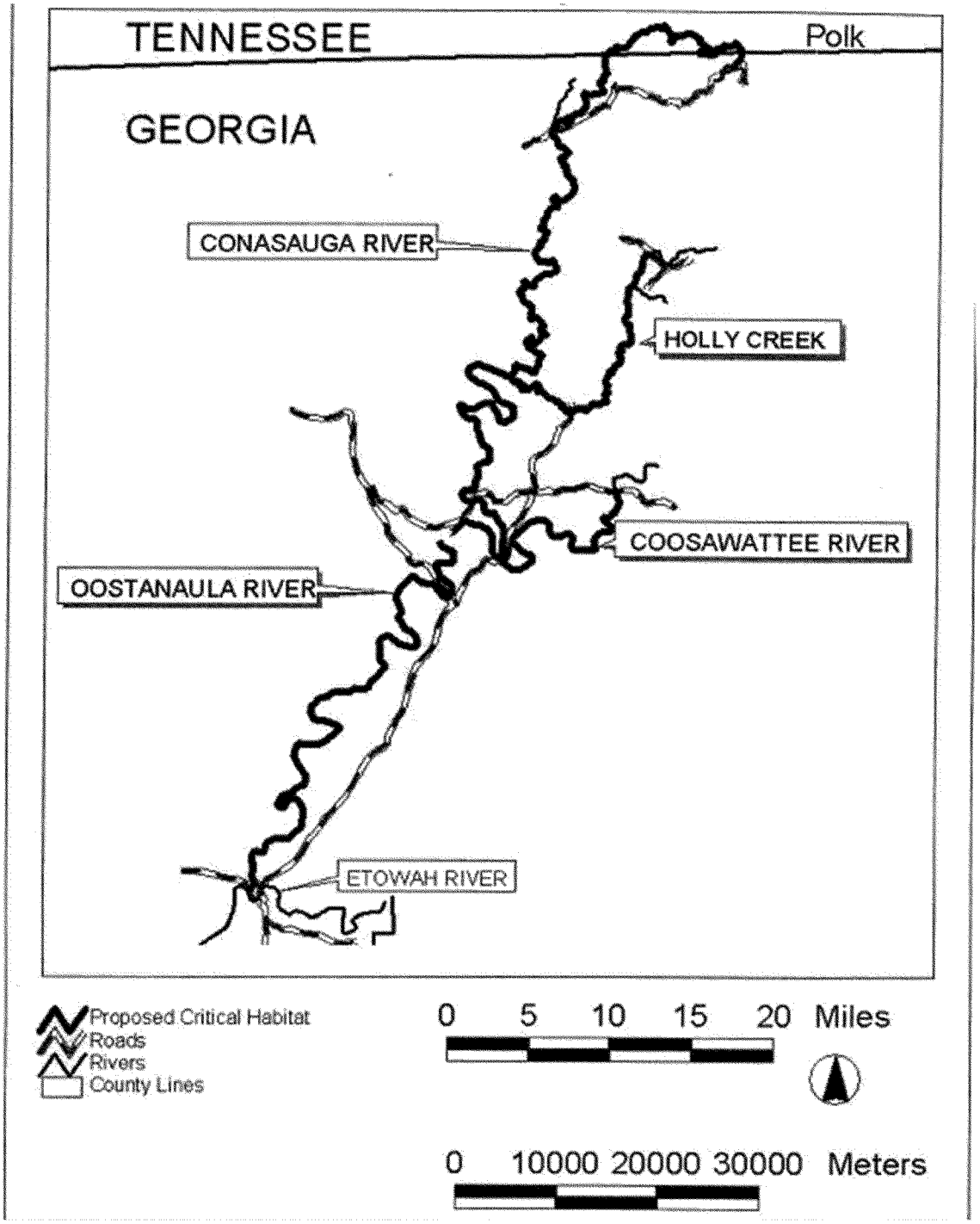


(xxvii) Unit 25. Oostanaula, Coosawattee, and Conasauga Rivers, and Holly Creek, Floyd, Gordon, Whitfield, Murray Counties, Georgia; Bradley, Polk Counties, Tennessee. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Alabama moccasinshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 25 follows:

Unit 25: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Alabama Moccasinshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook

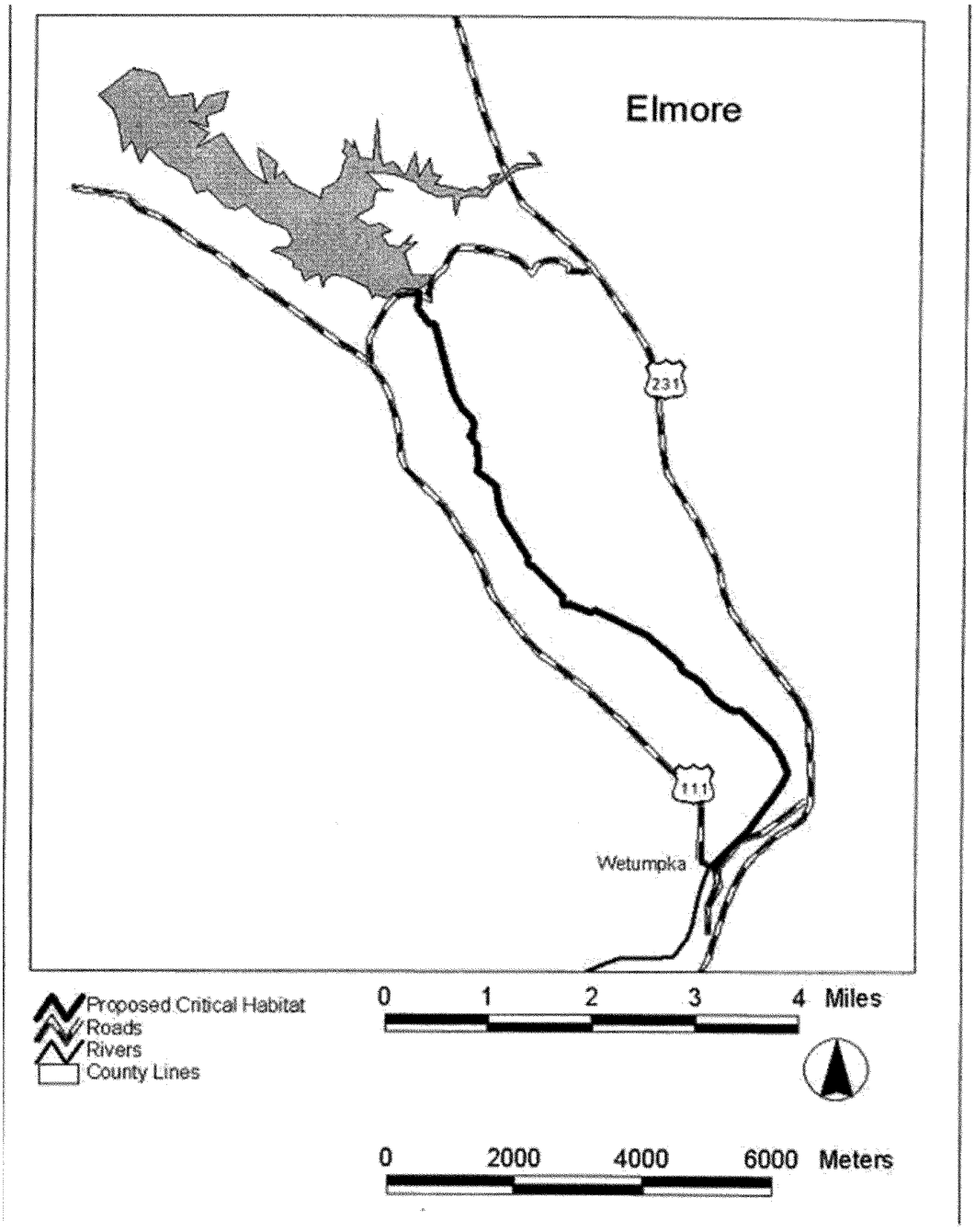


(xxviii) Unit 26. Lower Coosa River, Elmore County, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Alabama moccasinshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 26 follows:

Unit 26: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Alabama Moccasinshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook



* * * * *

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–21219 Filed 9–29–21; 8:45 am]

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