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Contents

Federal Register

Vol. 87, No. 42

Thursday, March 3, 2022

Agricultural Marketing Service

RULES

Nomenclature Changes, 11933–11934

NOTICES

Meetings:

National Organic Standards Board, 12074

Agricultural Research Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12075–12076

Strategic Plan for Aquaculture Economic Development and National Aquaculture Development Plan, 12074–12075

Agriculture Department

See Agricultural Marketing Service

See Agricultural Research Service

See Rural Housing Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12076–12077

Army Department

NOTICES

Environmental Assessments; Availability, etc.:

Iron Dome Defense System; Finding of No Significant Impact, 12122–12123

Bureau of Consumer Financial Protection

RULES

Compliance Bulletin:

Mitigating Harm from Repossession of Automobiles, 11951–11954

Bureau of the Fiscal Service

PROPOSED RULES

Surety Companies Doing Business with the United States, 12003–12016

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

ACH Vendor/Miscellaneous Payment Enrollment Form, 12214

Collateral Security Resolution and Collateral Pledge and Security Agreement, 12215

Centers for Medicare & Medicaid Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Medicaid and Children's Health Insurance Program, 12170–12171

Civil Rights Commission

NOTICES

Meetings:

Maine Advisory Committee, 12078–12079

Commerce Department

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

Defense Department

See Army Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12126

Arms Sales, 12123–12143

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

National Center for Education Statistics System Clearance for Cognitive, Pilot, and Field Test Studies 2022–2025, 12144

School Pulse Panel, 12161

Survey of Postgraduate Outcomes for the Fulbright-Hays Doctoral Dissertation Research Abroad Program, 12143–12144

Applications for New Awards:

Educational Technology, Media, and Materials for Individuals with Disabilities Program—Innovative Technology-Based Approaches for Assessing Children with Disabilities, 12144–12152

Personnel Development to Improve Services and Results for Children With Disabilities—National Center for Development and Dissemination of Digital Open Educational Resources that Translate Research to Practice for Building the Capacity of Personnel Serving Students with Disabilities, 12152–12161

Election Assistance Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

2022 Election Administration and Voting Survey, 12161–12162

Energy Department

See Energy Information Administration

PROPOSED RULES

Energy Conservation Program:

Standards for Battery Chargers, 11990–11996

NOTICES

Meetings:

President's Council of Advisors on Science and Technology, 12162–12163

Energy Information Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12163–12164

Environmental Protection Agency

RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

Virginia; Revision to the Classification and Implementation of the 2015 Ozone National Ambient Air Quality Standard for the Northern Virginia Nonattainment Area, 11959–11961

Wisconsin; Permit Streamlining Updates, 11957–11959

Outer Continental Shelf Air Regulations Update to Include New Jersey State Requirements, 11961–11965

Pesticide Tolerance; Exemptions, Petitions, Revocations, etc.:

Polyammonium Bisulfate, 11965–11970

PROPOSED RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

Indiana; Redesignation of the Indiana Portion of the Chicago-Naperville Area to Attainment of the 2008 Ozone Standard, NO_x RACT Waiver, and Serious Plan Elements, 12033–12048

New Hampshire; Testing and Monitoring Procedures, Prevention of Significant Deterioration Program Requirements, Volatile Organic Compounds Reasonably Available Control Technology, 12016–12020

Wisconsin; Redesignation of the Revised Door County (Partial) Area to Attainment of the 2015 Ozone National Ambient Air Quality Standard, 12020–12033

NOTICES

Pesticide Product Registration:

Applications for New Uses, January 2022, 12164–12165

Executive Office of the President

NOTICES

Federal Scientific Integrity Policy Framework, 12165–12167

Federal Aviation Administration

RULES

Airspace Designations and Reporting Points:

Hampton, GA, 11954–11955

Southwest Oregon Regional Airport, OR, 11955–11957

PROPOSED RULES

Airspace Designations and Reporting Points:

Hugoton, KS, 12001–12003

Jefferson, IA, 12000–12001

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Application for Pilot School Certification, 12212–12213

Federal Communications Commission

NOTICES

Meetings:

Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States, 12167

Privacy Act; Matching Program, 12167–12168

Federal Election Commission

RULES

Agency Procedure:

Treatment of Foreign State Respondents at the Initiation of the Enforcement Process, 11950–11951

NOTICES

Meetings; Sunshine Act, 12168

Federal Emergency Management Agency

RULES

Regulations on Rulemaking Procedures, 11971–11978

Federal Housing Finance Agency

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12168–12169

Federal Maritime Commission

NOTICES

Agreement Filed, 12170

Filing:

Expeditors International of Washington, Inc., 12169–12170

Federal Motor Carrier Safety Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Electronic Logging Device Vendor Registration, 12213

Federal Trade Commission

PROPOSED RULES

Petition for Rulemaking:

Institute for Policy Integrity, 12003

Fish and Wildlife Service

PROPOSED RULES

Endangered and Threatened Species:

Reclassification of the Relict Darter from Endangered to Threatened with a Section 4(d) Rule, 12056–12073

Threatened Species Status with Section 4(d) Rule for Western Fanshell and Ouachita Fanshell and Designation of Critical Habitat, 12338–12384

Food and Drug Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12175

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Authorization for Medical Products for Use in Emergencies, 12175–12178

Final Debarment Order:

Eduardo Navarro, 12171–12172

George Kuiper, 12174–12175

Patrick Charles Bishop, 12172–12174

Foreign Assets Control Office

NOTICES

Sanctions Actions, 12215–12220

General Services Administration

PROPOSED RULES

Federal Travel Regulation:

Common Carrier Transportation, 12048–12056

Health and Human Services Department

See Centers for Medicare & Medicaid Services

See Food and Drug Administration

See Health Resources and Services Administration

See National Institutes of Health

Health Resources and Services Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

MCH Jurisdictional Survey Instrument for the Title V MCH Block Grant Program, 12179–12181

National Vaccine Injury Compensation Program:

List of Petitions Received, 12178–12179

Homeland Security Department

See Federal Emergency Management Agency

See U.S. Citizenship and Immigration Services

See U.S. Immigration and Customs Enforcement

Industry and Security Bureau**RULES**

Export Administration Regulations:
Implementation of Sanctions against Russia, 12226–12251

Interior Department

See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India, 12084–12086
Certain Steel Nails from India, the Sultanate of Oman, Sri Lanka, Thailand, and the Republic of Turkey, 12080–12081
Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 12086–12089
Pentafluoroethane (R–125) from the People's Republic of China, 12081–12084
Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico, 12079–12080

Justice Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12204–12205
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Applications for Special Deputation, 12205

Land Management Bureau**NOTICES**

Meetings:
Northwest Resource Advisory Council, 12201–12202
Requests for Nominations:
Western Oregon Resource Advisory Council, 12201

Management and Budget Office**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12205–12206

National Aeronautics and Space Administration**NOTICES**

Meetings:
Astrophysics Advisory Committee, 12206–12207

National Credit Union Administration**PROPOSED RULES**

Asset Threshold for Determining the Appropriate Supervisory Office, 11996–12000

National Institutes of Health**NOTICES**

Meetings:
Center for Scientific Review, 12182
National Institute of General Medical Sciences, 12181
Office of Research Infrastructure Programs Special Emphasis Panel: Applications for Scientific Conferences, 12182

National Oceanic and Atmospheric Administration**RULES**

Taking or Importing of Marine Mammals:
Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan; Correction, 11978–11985

NOTICES

Adjustment of Fees for Seafood Inspection Services, 12115
Endangered and Threatened Species:
Take of Anadromous Fish, 12116
Meetings:
Caribbean Fishery Management Council, 12119
Mid-Atlantic Fishery Management Council, 12120
New England Fishery Management Council, 12114–12117
North Pacific Fishery Management Council, 12119–12120
Takes of Marine Mammals Incidental to Specified Activities:
Pier 58 Reconstruction and Pier 63 Removal Projects, Seattle, WA, 12089–12114
Taking or Importing of Marine Mammals:
Ferry Berth Improvements in Tongass Narrows, AK, 12117–12119
Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, 12120–12122

National Park Service**NOTICES**

Intent to Repatriate Cultural Items:
Boston University, Boston, MA, 12203–12204
Cheekwood Estate and Gardens, Nashville, TN, 12202–12203

National Science Foundation**NOTICES**

Meetings:
Advisory Committee for Mathematical and Physical Sciences, 12207

Neighborhood Reinvestment Corporation**NOTICES**

Meetings; Sunshine Act, 12207

Nuclear Regulatory Commission**RULES**

American Society of Mechanical Engineers' Code Cases, 11934–11950

PROPOSED RULES

Determining Which Structures, Systems, Components and Functions are Important to Safety, 11986–11990
Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning, 12254–12336

NOTICES

Charter Renewal:
Advisory Committee on the Medical Uses of Isotopes, 12207–12208
Draft Regulatory Guide:
Cyber Security Programs for Nuclear Power Reactors, 12208–12209
Guidance:
Application of Radiological Sabotage Design-Basis Threat in the Design, Development, and Implementation of a Physical Security Program, 12209–12210

Pipeline and Hazardous Materials Safety Administration**NOTICES**

Meetings:
Hazardous Materials; International Standards on the Transport of Dangerous Goods, 12214

Postal Regulatory Commission**NOTICES**

Mail Classification Schedule, 12210–12211

Presidential Documents**PROCLAMATIONS**

Special Observances:

American Red Cross Month (Proc. 10342), 11923–11924

Irish-American Heritage Month (Proc. 10343), 11925–11926

National Colorectal Cancer Awareness Month (Proc. 10344), 11927–11928

Women's History Month (Proc. 10345), 11929–11931

ADMINISTRATIVE ORDERS

Ukraine; Continuation of National Emergency (Notice of March 2, 2022), 12385–12388

Rural Housing Service**NOTICES**

New Fee Structure for Section 538 Guaranteed Rural Rental Housing Program Initial and Annual Guarantee Fees, 12077–12078

Securities and Exchange Commission**NOTICES**

Self-Regulatory Organizations; Proposed Rule Changes: The Nasdaq Stock Market, LLC, 12211–12212

Small Business Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12212

Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration

See Pipeline and Hazardous Materials Safety Administration

Treasury Department

See Bureau of the Fiscal Service

See Foreign Assets Control Office

NOTICES

Agreement for a Social Impact Partnership Project, 12220–12222

U.S. Citizenship and Immigration Services**NOTICES**

Extension and Redesignation of South Sudan for Temporary Protected Status, 12190–12201

U.S. Immigration and Customs Enforcement**NOTICES**

Employment Authorization:

South Sudanese F–1 Nonimmigrant Students

Experiencing Severe Economic Hardship as a Direct Result of the Current Humanitarian Crisis in South Sudan, 12182–12189

Veterans Affairs Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Program of Comprehensive Assistance for Family Caregivers Decision Appeal Forms, 12223–12224

Meetings:

Advisory Committee on Disability Compensation, 12223
Veterans and Community Oversight and Engagement Board, 12222–12223

Separate Parts In This Issue**Part II**

Commerce Department, Industry and Security Bureau, 12226–12251

Part III

Nuclear Regulatory Commission, 12254–12336

Part IV

Interior Department, Fish and Wildlife Service, 12338–12384

Part V

Presidential Documents, 12385–12388

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR	300-70.....12048
Proclamations:	301-2.....12048
10342.....11923	301-10.....12048
10343.....11925	301-11.....12048
10344.....11927	301-13.....12048
10345.....11929	301-53.....12048
Administrative Orders:	301-70.....12048
Notices:	301-71.....12048
Notice of March 2,	App. C. to Ch. 301.....12048
2022.....12387	304-3.....12048
9 CFR	304-5.....12048
201.....11933	44 CFR
10 CFR	1.....11971
50.....11934	50 CFR
Proposed Rules:	229.....11978
20.....12254	Proposed Rules:
26.....12254	17 (2 documents).....12056,
50 (2 documents).....11986,	12338
12254	
51.....12254	
52.....12254	
72.....12254	
73.....12254	
140.....12254	
430.....11990	
11 CFR	
111.....11950	
12 CFR	
Ch. X.....11951	
Proposed Rules:	
700.....11996	
701.....11996	
702.....11996	
708a.....11996	
708b.....11996	
750 996	
790.....11996	
14 CFR	
71 (2 documents).....11954,	
11955	
Proposed Rules:	
71 (2 documents).....12000,	
12001	
15 CFR	
734.....12226	
738.....12226	
740.....12226	
742.....12226	
744.....12226	
746.....12226	
772.....12226	
16 CFR	
Proposed Rules:	
4.....12003	
31 CFR	
Proposed Rules:	
223.....12003	
40 CFR	
52 (2 documents).....11957,	
11959	
55.....11961	
180.....11965	
Proposed Rules:	
52 (3 documents).....12016,	
12020, 12033	
81 (2 documents).....12020,	
12033	
41 CFR	
Proposed Rules:	
300-3.....12048	

Presidential Documents

Title 3—**Proclamation 10342 of February 28, 2022****The President****American Red Cross Month, 2022****By the President of the United States of America****A Proclamation**

Throughout our history, Americans have always stepped up for each other in moments of crisis. This spirit is woven into the fabric of our Nation, and for more than 140 years it has been exemplified by devoted employees, volunteers, and supporters of the American Red Cross. This month, we honor the American Red Cross and the selfless Americans who serve our communities in need across our country and around the world.

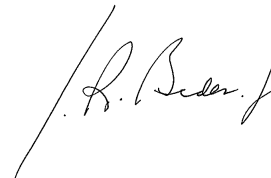
Since its founding in 1881 by Clara Barton, a nurse and educator, the American Red Cross has carried out its noble mission of preventing and easing human suffering. Today, in big cities and small towns across the country, hundreds of thousands of Red Cross workers—more than 90 percent of whom are volunteers—continue to carry out that mission by selflessly giving blood, making donations, and teaching first aid in local communities.

Support from the American Red Cross has provided hope to people in their darkest hours—in the face of armed conflict, climate-related disasters, and the COVID–19 pandemic. Red Cross volunteers are on the front lines of recovery, providing emergency shelter to families impacted by devastating floods, tornadoes, fires, and other disasters; donating lifesaving blood to meet the rising demand of hospital patients; supporting our Nation’s service members, veterans, and their families; and providing medical care and essential resources to combat diseases worldwide.

During American Red Cross Month, Americans who can are encouraged to answer the call to donate blood and serve communities in need. You are encouraged to learn more about eligibility and the steps involved to donating blood. Let us renew our commitment to Clara Barton’s timeless ideal of caring for one another in times of hardship and uncertainty. Let us take part in this proud tradition of lending a helping hand to those in need. Let us live up to the duty of care we owe each other through acts of compassion every day.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America and Honorary Chair of the American Red Cross, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2022 as American Red Cross Month. I encourage all Americans to observe this month with appropriate programs, ceremonies and activities, and by supporting the work of service and relief organizations.

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

A handwritten signature in black ink, appearing to read "Joe Biden", written in a cursive style.

Presidential Documents

Proclamation 10343 of February 28, 2022

Irish-American Heritage Month, 2022

By the President of the United States of America

A Proclamation

For centuries, Irish Americans have played a crucial role in helping define the soul of our Nation, and today, nearly 1 in 10 Americans proudly trace their roots back to the Emerald Isle. With hope and faith in their hearts, the first immigrants from Ireland crossed the Atlantic in search of liberty and opportunity. It was the dream of a better life that brought my ancestors—the Blewitts of County Mayo and the Finnegans of County Louth—and countless other Irish immigrants.

Like so many Irish American families, my grandparents carried the spirit and memory of Ireland in their hearts—a pride and passion they instilled in their home in Scranton, Pennsylvania. Through the journeys of their own mothers and fathers and in the lessons they passed on to my mother, Catherine Eugenia Finnegan Biden, they joined Irish Americans in every corner of America in helping to write the next chapter of the American story.

The story of Irish Americans has always been one of strength and perseverance through adversity. Many Irish immigrants arrived on America's shores to escape the Great Famine, only to face discrimination, prejudice, and poverty. Despite these hard times, they embraced their new homes in every corner of America—from the Atlantic to the Pacific, across the Midwest and through the Rocky Mountains—and helped build and fortify our Nation into what it is today.

Irish Americans expanded the American middle class, building ladders of opportunity that future generations could climb. They became teachers, firefighters, police officers, labor leaders, farmers, business owners, and more. Along the way, Irish Americans contributed enormously to the American labor movement—championing safe working conditions, advocating for children's rights, and fighting racism, prejudice, and income inequality. They bravely answered the call to serve, defending our Union and its values in every battle. They continue to work on behalf of the American people as public servants—serving in the Congress, the Supreme Court, Federal agencies, the White House, and in State and local offices across the country. Irish Americans have enriched our culture and nourished our hearts and souls through the arts and humanities, earning recognition as Nobel and Pulitzer prize-winning poets and authors, award-winning musicians, storytellers, and dancers, and critically acclaimed actors. They have blessed our Nation with their indomitable spirit, faith, and love for family that has been passed down through the generations. This sense of community, hospitality, resilience, and passion are integral pieces of America's cultural tapestry.

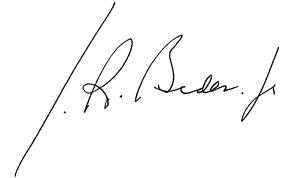
The United States and Ireland are deeply and forever intertwined: linked in memory and imagination—in joy, sorrow, and resilience—by our common love and common dreams. We share, in every heart, an unrelenting optimism—a flicker of hope that guides us through even the darkest of nights.

As we celebrate Irish-American Heritage Month, let us honor the journey and contributions of Irish Americans who helped shape this land of opportunity and define what it means to be American. Let us reaffirm the legacy

of friendship and strong family ties between the United States of America and Ireland—united by our common purpose, by our histories, and by our futures.

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 March 2022 as Irish-American Heritage Month. I call upon all Americans to celebrate the achievements and contributions of Irish Americans to our Nation with appropriate ceremonies, activities, and programs.

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



Presidential Documents

Proclamation 10344 of February 28, 2022

National Colorectal Cancer Awareness Month, 2022

By the President of the United States of America

A Proclamation

Cancer is personal to nearly every family, including my own. Each year, more than 50,000 families across the country lose a loved one to colorectal cancer—the fourth most common cancer and the second leading cause of cancer deaths in America. The toll it exacts is immeasurable, but when we detect colorectal cancer early, we can save lives and deliver hope. During National Colorectal Cancer Awareness Month, we raise awareness of this dreaded disease and renew our commitment to ending cancer as we know it.

While anyone can be afflicted by colorectal cancer, we know that this illness strikes at a disproportionate rate among Black Americans as well as Americans over the age of 50. Getting regular screenings and identifying symptoms and risk factors are both pivotal to saving lives. According to the Centers for Disease Control and Prevention, symptoms such as blood in the stool, a change in bowel habits, stomach pain, bloating, cramps that do not go away, or weight loss without a known cause should be discussed with a health care provider. However, early stages of colorectal cancer often emerge without symptoms, and it is important to begin regular screenings starting at the age of 45.

In addition, people who smoke, consume alcohol, or are obese are more likely to be diagnosed with colorectal cancer. Adopting healthy behaviors—including quitting the use of tobacco products, reducing alcohol consumption, and eating meals that include fruits, vegetables, and whole grains—can also reduce your risk. For more information on risk factors, please visit www.Cancer.gov.

I believe that it is within our power to end cancer as we know it. That is why I have re-ignited the Cancer Moonshot and set new ambitious goals, to reduce the death rate from cancer by 50 percent over the next 25 years and to improve the lives of people and their families living with and surviving cancer. I have called on the Congress to create the Advanced Research Projects Agency for Health (ARPA-H), which will invest billions of dollars to advance breakthroughs in the prevention, detection, and treatment of cancer and other deadly diseases. As we continue to pursue game-changing scientific breakthroughs, my Administration also remains steadfast in our commitment to increasing colorectal cancer screenings, follow-ups, and referrals, with a particular focus on underserved populations. On February 2, 2022, the First Lady and I launched a call to action on cancer screening and early detection. Our goal is to jumpstart progress on potentially life-saving screenings that far too many Americans have missed as a result of the pandemic and help ensure that everyone in the United States benefits equitably from the tools we have to detect and diagnose cancer. We are calling on every American to get back on track with their recommended screenings, including colorectal cancer screenings, and for the public and private sectors to increase access to early detection for individuals and communities.

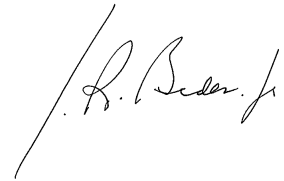
Ensuring that every American has access to quality, affordable health coverage is another critical way that we can win the fight against cancer. Thanks

to the Affordable Care Act, most health insurance plans must cover certain preventive services with no out-of-pocket costs. This coverage now includes colorectal cancer screenings for adults over the age of 45, making it easier to get colorectal cancer screenings and helping improve access to earlier treatment. Health coverage under the Affordable Care Act has never been more accessible and affordable than it is today, and I encourage all Americans to learn more by visiting www.HealthCare.gov.

During National Colorectal Cancer Awareness Month, I urge every American to exercise vigilance around their own health and the health of their loved ones. Early diagnosis and treatment save lives—and getting screened for colorectal cancer is vitally important as we continue our shared mission to end cancer as we know it.

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 March 2022 as National Colorectal Cancer Awareness Month. I encourage all citizens, government agencies, private businesses, non-profit organizations, and other groups to join in activities that will increase awareness and prevention of colorectal cancer.

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



Presidential Documents

Proclamation 10345 of February 28, 2022

Women's History Month, 2022

By the President of the United States of America

A Proclamation

Every March, Women's History Month provides an opportunity to honor the generations of trailblazing women and girls who have built our Nation, shaped our progress, and strengthened our character as a people.

Throughout our history, despite hardship, exclusion, and discrimination, women have strived and sacrificed for equity and equality in communities across the country. Generations of Native American women were stewards of the land and continue to lead the fight for climate justice. Black women fought to end slavery, advocate for civil rights, and pass the Voting Rights Act. Suffragists helped pass the 19th Amendment to the Constitution so that no American could be denied a vote on the basis of sex.

Standing on the shoulders of the heroines who came before them, today's women and girls continue to carry forward the mission of ensuring our daughters have the same opportunities as our sons. Women of the labor movement are achieving monumental reforms to help all workers secure the better pay, benefits, and safety they deserve. LGBTQI+ women and girls are leading the fight for justice, opportunity, and equality—especially for the transgender community. Women and girls continue to lead groundbreaking civil rights movements for social justice and freedom, so that everyone can realize the full promise of America.

But despite the progress being made, women and girls—especially women and girls of color—still face systemic barriers to full participation and wider gaps in opportunity and equality. The COVID-19 pandemic has exposed and exacerbated those disparities which have disproportionately impacted women's labor force participation, multiplied the burden on paid and unpaid caregivers, and increased rates of gender-based violence. The constitutional right to abortion established in *Roe v. Wade* is facing an unprecedented assault as States pass increasingly onerous restrictions to critical reproductive health care and bodily autonomy. Workers contend with gender and racial wage gaps that can amount to hundreds of thousands of dollars denied over the course of their lifetimes. The Congress sent the Equal Rights Amendment to the States for ratification 50 years ago and it is long past time that the principle of women's equality should be enshrined in our Constitution.

My Administration has made this issue a top priority from day one. Through historic Executive actions, my Administration launched Government-wide efforts to advance gender equity and equality, racial equity, and LGBTQI+ equality. Through the American Rescue Plan, my Administration delivered immediate relief to women and families, funded domestic violence and sexual assault services, supported child care providers, and invested in care workers—who are disproportionately women of color. Through the Bipartisan Infrastructure Law, we are working to ensure equitable access to good-paying jobs, particularly in sectors where women have historically been underrepresented. We have taken critical steps to end the scourge of gender-based violence and advocate for the long overdue reauthorization of the Violence Against Women Act—legislation that I was proud to author and champion as a United States Senator. We are confronting the epidemic

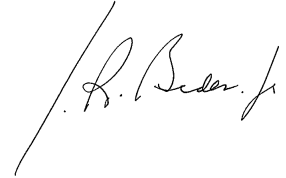
levels of violence that transgender women and girls continue to face. We are working to expand access to health care, including reproductive health care for all people regardless of their gender, race, ethnicity, income, or zip code. We are fighting to lower the costs of child care and provide access to free preschool for all three- and four-year olds. We issued a call to action to eliminate racial disparities in maternal health care, which disproportionately impact Black and Indigenous women. And my Administration established a Gender Equity and Equality Action Fund to advance the rights and economic security of women and girls around the world.

This work is being led by the most diverse and gender-balanced Cabinet in American history, including the first woman—and woman of color—to serve as Vice President, Kamala Harris; the first woman ever to serve as Treasury Secretary and Director of National Intelligence; the first Native American woman to serve as a Cabinet Secretary; women leading the Departments of Commerce, Energy, Housing and Urban Development, along with the Small Business Administration and the Office of Management and Budget; and women of color representing America on the world stage as United States Ambassador to the United Nations and the United States Trade Representative as well as leading my Council of Economic Advisers in the White House. In addition, I established the first White House Gender Policy Council to advance gender equity across the Federal Government and released the first-ever national gender strategy to support the full participation of all people—including women and girls—in the United States and around the world.

This Women's History Month, as we reflect on the achievements of women and girls across the centuries and pay tribute to the pioneers who paved the way, let us recommit to the fight and help realize the deeply American vision of a more equal society where every person has a shot at pursuing the American dream. In doing so, we will advance economic growth, our health and safety, and the security of our Nation and the world.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2022 as Women's History Month. I call upon all Americans to observe this month and to celebrate International Women's Day on March 8, 2022, with appropriate programs, ceremonies, and activities. I also invite all Americans to visit www.WomensHistoryMonth.gov to learn more about the vital contribution of women to our Nation's history.

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

A handwritten signature in black ink, appearing to read "Joe Biden", written in a cursive style.

Rules and Regulations

Federal Register

Vol. 87, No. 42

Thursday, March 3, 2022

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Part 201

[Doc. No. AMS–LRRS–22–0011]

Nomenclature Changes; Technical Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This rule removes the undesignated center headings in a part of the Code of Federal Regulations administered by the Agricultural Marketing Service (AMS). Further, this rule organizes the part's sections into subparts and adds designated subpart headings. This action is intended to make the part more readable and easier to amend in the future. Finally, these revisions are made to conform to Office of the Federal Register formatting requirements.

DATES: Effective March 3, 2022.

FOR FURTHER INFORMATION CONTACT: Laurel L. May, Regulatory Analyst, Agricultural Marketing Service, USDA; phone: (202) 384–2975 or email: Laurel.May@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule makes technical amendments to regulations in the Code of Federal Regulations (CFR). Part 201 of Title 9 of the CFR contains regulations that effectuate the Packers and Stockyards Act, 1921 (7 U.S.C. 181 *et seq.*). 9 CFR 201 is divided into several sections that are currently grouped under undesignated center headings. AMS has determined that reorganizing the part into subparts and adding designated subpart headings will make the part more readable and facilitate future amendatory actions. Further, AMS is revising headings in part 201 to conform with nomenclature guidelines established by the Office of the Federal

Register. This rule falls within a category of regulatory actions that the Office of Management and Budget exempted from Executive Order 12866 review.

The notice and comment requirements in the Administrative Procedure Act (APA) (5 U.S.C. 553) apply to rules as defined in 5 U.S.C. 551 (“the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing”). This final rule is limited to reorganizing Part 201 into subparts and adding designated subpart headings. It does not create new or amend existing requirements or interpretations. Thus, AMS has determined that this final rule is not a rule subject to the notice and comment requirements of 5 U.S.C. 553. Additionally, to the extent that this final rule is subject to this section, AMS has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment because the revisions are not substantive and will have no impact on the regulatory requirements in the affected part. AMS has determined that public comment on such administrative changes is unnecessary and that there is good cause under the APA for proceeding with a final rule.

Further, because a notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule under the APA or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, this rule is issued in final form. Although there is no formal comment period, public comments on this rule are welcome on an ongoing basis. Comments should be submitted to the address or email under the **FOR FURTHER INFORMATION CONTACT** caption.

List of Subjects in 9 CFR Part 201

Confidential business information, Reporting and recordkeeping

requirements, Stockyards, Surety bonds, Trade practices.

For the reasons set forth in the preamble, AMS amends 9 CFR part 201 as follows:

PART 201—ADMINISTERING THE PACKERS AND STOCKYARDS ACT

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

Authority: 7 U.S.C. 181–229c.

■ 2. Revise the heading for part 201 to read as set forth above.

■ 3. Remove the undesignated center heading before § 201.1 and add a heading for subpart A, consisting of §§ 201.1 through 201.2, in its place to read as follows:

Subpart A—Definitions

■ 4. Remove the undesignated center heading before § 201.3 and add a heading for subpart B, consisting of §§ 201.3 through 201.4, in its place to read as follows:

Subpart B—Administration

■ 5. Remove the undesignated center heading before § 201.5 and add a heading for subpart C, consisting of § 201.5, in its place to read as follows:

Subpart C—Applicability of Industry Rules

■ 6. Remove the undesignated center heading before § 201.10 and add a heading for subpart D, consisting of §§ 201.10 through 201.11, in its place to read as follows:

Subpart D—Registration

■ 7. Remove the undesignated center heading before § 201.17 and add a heading for subpart E, consisting of § 201.17, in its place to read as follows:

Subpart E—Schedules of Rates and Charges

■ 8. Remove the undesignated center heading before § 201.27 and add a heading for subpart F, consisting of §§ 201.27 through 201.28, in its place to read as follows:

Subpart F—Bonding

■ 9. Remove the undesignated center heading before § 201.29 and add a

heading for subpart G, consisting of §§ 201.29 through 201.34, in its place to read as follows:

Subpart G—Market Agency, Dealer, and Packer Bonds

■ 10. Remove the undesignated center heading before § 201.39 and add a heading for subpart H, consisting of §§ 201.39 through 201.42, in its place to read as follows:

Subpart H—Proceeds of Sale

■ 11. Remove the undesignated center heading before § 201.43 and add a heading for subpart I, consisting of §§ 201.43 through 201.49, in its place to read as follows:

Subpart I—Accounts and Records

■ 12. Remove the undesignated center heading before § 201.53 and add a heading for subpart J, consisting of §§ 201.53 through 201.70, in its place to read as follows:

Subpart J—Trade Practices

■ 13. Remove the undesignated center heading before § 201.71 and add a heading for subpart K, consisting of §§ 201.71 through 201.82, in its place to read as follows:

Subpart K—Services

■ 14. Remove the undesignated center heading before § 201.86 and add a heading for subpart L, consisting of §§ 201.86, in its place to read as follows:

Subpart L—Inspection of Brands

■ 15. Remove the undesignated center heading before § 201.94 and add a heading for subpart M, consisting of §§ 201.94 through 201.99, in its place to read as follows:

Subpart M—General

■ 16. Remove the undesignated center heading before § 201.100 and add a heading for subpart N, consisting of §§ 201.100 through 201.218, in its place to read as follows:

Subpart N—Packers and Live Poultry Dealers

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022-04172 Filed 3-2-22; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC-2017-0025]

RIN 3150-AJ94

Approval of American Society of Mechanical Engineers' Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference revisions of three regulatory guides to approve new, revised, and reaffirmed code cases published by the American Society of Mechanical Engineers. The NRC is also incorporating by reference one NRC NUREG associated with a condition on one of the regulatory guides. This action allows nuclear power plant licensees and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals, and manufacturing licenses to use the code cases listed in these regulatory guides as voluntary alternatives to engineering standards for the construction, inservice inspection, and inservice testing of nuclear power plant components. These engineering standards are set forth in the American Society of Mechanical Engineers' Boiler and Pressure Vessel Codes and American Society of Mechanical Engineers' Operation and Maintenance Codes, which are currently incorporated by reference into the NRC's regulations. Further, this final rule announces the availability of a related regulatory guide, not incorporated by reference into the NRC's regulations, that lists code cases that the NRC has not approved for use. **DATES:** This final rule is effective on April 4, 2022. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of April 4, 2022.

ADDRESSES: Please refer to Docket ID NRC-2017-0025 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-2017-0025. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the

individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to 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.

- *Technical Library:* The Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, is open by appointment only. Interested parties may make appointments to examine documents by contacting the NRC Technical Library by email at Library.Resource@nrc.gov between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Martha Barillas, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-2760, email: Martha.Barillas@nrc.gov; or Bruce Lin, Office of Nuclear Regulatory Research, telephone: 301-415-2446; email: Bruce.Lin@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Executive Summary

A. Need for the Regulatory Action

The purpose of this regulatory action is to incorporate by reference into the NRC's regulations the latest revisions of three regulatory guides (RGs). This regulatory action is also incorporating by reference, NUREG-2228, "Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed Validation Procedure," that is associated with a condition in one of the regulatory guides. The three RGs identify new,

revised, and reaffirmed code cases published by the American Society of Mechanical Engineers (ASME), which the NRC has determined are acceptable for use as voluntary alternatives to compliance with certain provisions of the ASME *Boiler and Pressure Vessel Code* (BPV Code) and the ASME *Code for Operation and Maintenance of Nuclear Power Plants, Division 1, OM Code: Section IST* (OM Code), currently incorporated by reference into the NRC's regulations.

B. Major Provisions

The three RGs that the NRC is incorporating by reference are RG 1.84, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III," Revision 39; RG 1.147, "Inservice Inspection Code Case Acceptability,

ASME Section XI, Division 1," Revision 20; and RG 1.192, "Operation and Maintenance [OM] Code Case Acceptability, ASME OM Code," Revision 4. The NRC is also incorporating by reference NUREG-2228, which provides the procedure for validating the weld residual stress analysis methodology associated with ASME Code Case N-847. This final rule allows nuclear power plant licensees and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals, and manufacturing licenses to use the code cases newly listed in these revised RGs as voluntary alternatives to engineering standards for the construction, inservice inspections, and inservice testing of nuclear power plant components. In this document, the

NRC also notifies the public of the availability of RG 1.193, "ASME Code Cases Not Approved for Use," Revision 7. This document lists code cases that the NRC has not approved for generic use and is not incorporated by reference into the NRC's regulations.

The NRC prepared a regulatory analysis to determine the expected quantitative costs and benefits of this final rule, as well as qualitative factors to be considered in the NRC's rulemaking decision. The analysis concluded that this rule results in net savings to the industry and the NRC. As shown in Table 1, the estimated total net benefits relative to the regulatory baseline range from approximately \$5.86 million (7-percent net present value) to \$6.67 million (3-percent net present value).

TABLE 1—COST BENEFIT SUMMARY

Attribute	Total averted costs (costs)		
	Undiscounted	7% Net present value	3% Net present value
Industry Implementation	\$0	\$0	\$0
Industry Operation	4,920,000	3,920,000	4,450,000
Total Industry Costs	4,920,000	3,920,000	4,450,000
NRC Implementation	0	0	0
NRC Operation	2,460,000	1,940,000	2,220,000
Total NRC Costs	2,460,000	1,940,000	2,220,000
Net	7,380,000	5,860,000	6,670,000

The regulatory analysis also considered the following qualitative considerations: (1) Flexibility and decreased uncertainty for licensees when making modifications or preparing to perform inservice inspection or inservice testing; (2) consistency with the provisions of the National Technology Transfer and Advancement Act of 1995, which encourages Federal regulatory agencies to consider adopting voluntary consensus standards as an alternative to *de novo* agency development of standards affecting an industry; (3) consistency with the NRC's policy of evaluating the latest versions of consensus standards in terms of their suitability for endorsement by regulations and regulatory guides; and (4) consistency with the NRC's goal to harmonize with international standards to improve regulatory efficiency for both the NRC and international standards groups.

The regulatory analysis concludes that this final rule should be adopted because it is justified when integrating

the cost-beneficial quantitative results and the positive and supporting nonquantitative considerations in the decision. For more information, please see the final regulatory analysis as indicated in Section XVI, "Availability of Documents," of this document.

Table of Contents

- I. Background
- II. Discussion
- III. Opportunities for Public Participation
- IV. Public Comment Analysis
- V. Section-by-Section Analysis
- VI. Regulatory Flexibility Certification
- VII. Regulatory Analysis
- VIII. Backfitting and Issue Finality
- IX. Plain Writing
- X. Environmental Assessment and Final Finding of No Significant Environmental Impact
- XI. Paperwork Reduction Act
- XII. Congressional Review Act
- XIII. Voluntary Consensus Standards
- XIV. Incorporation by Reference- Reasonable Availability to Interested Parties
- XV. Availability of Guidance
- XVI. Availability of Documents

I. Background

The ASME develops and publishes the ASME BPV Code, which contains requirements for the design, construction, and inservice inspection examination of nuclear power plant components, and the ASME OM Code,¹ which contains requirements for inservice testing of nuclear power plant components. In response to BPV and OM Code user requests, the ASME develops code cases that provide voluntary alternatives to BPV and OM Code requirements under special circumstances.

The NRC approves the ASME BPV and OM Codes in § 50.55a, "Codes and standards," of title 10 of the *Code of Federal Regulations* (10 CFR) through the process of incorporation by reference. As such, each provision of the ASME Codes incorporated by reference into and mandated by § 50.55a

¹ The editions and addenda of the ASME Code for Operation and Maintenance of Nuclear Power Plants have had different titles from 2005 to 2017 and are referred to as the "OM Code" collectively in this rule.

constitutes a legally-binding NRC requirement imposed by rule. As noted previously, the ASME code cases, for the most part, represent alternative approaches for complying with provisions of the ASME BPV and OM Codes. Accordingly, the NRC periodically amends § 50.55a to incorporate by reference the NRC's RGs listing approved ASME code cases that may be used as voluntary alternatives to the BPV and OM Codes.²

This final rule is the latest in a series of rules that incorporate by reference new versions of several RGs identifying new, revised, and reaffirmed,³ and unconditionally or conditionally acceptable ASME code cases that the NRC approves for use. In developing these RGs, the NRC reviews the ASME BPV and OM code cases, determines the acceptability of each code case, and publishes its findings in the RGs. The RGs are revised periodically as new code cases are published by the ASME. The NRC incorporates by reference the RGs listing acceptable and conditionally acceptable ASME code cases into § 50.55a. The NRC published a final rule dated March 16, 2020, that incorporated by reference into § 50.55a the most recent versions of the RGs, which are RG 1.84, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III," Revision 38; RG 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," Revision 19; and RG 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code," Revision 3.

II. Discussion

This final rule incorporates by reference NUREG-2228 and the latest revisions of the NRC's RGs that list the ASME BPV and OM code cases that the NRC finds to be acceptable, or acceptable with NRC-specified conditions ("conditionally acceptable"). Regulatory Guide 1.84, Revision 39, supersedes the incorporation by reference of Revision 38; RG 1.147, Revision 20, supersedes the incorporation by reference of Revision

19; and RG 1.192, Revision 4, supersedes the incorporation by reference of Revision 3.

The ASME code cases that are the subject of this final rule are the new and revised Section III and Section XI code cases as listed in Supplements 0 through 7 to the 2015 Edition of the ASME BPV Code, Supplements 0 through 7 to the 2017 Edition of the ASME BPV Code, Supplements 0 and 1 to the 2019 Edition of the ASME BPV Code, and the OM code cases listed in the 2020 Edition of the ASME OM Code and on the ASME Codes & Standards (C&S) Connect website.⁴

The latest editions and addenda of the ASME BPV and OM Codes that the NRC has approved for use are referenced in § 50.55a. The ASME also publishes code cases that provide alternatives to existing Code requirements that the ASME developed and approved. This final rule incorporates by reference the most recent revisions of RGs 1.84, 1.147, and 1.192, which allow nuclear power plant licensees, and applicants for combined licenses, standard design certifications, standard design approvals, and manufacturing licenses under the regulations that govern license certifications, to use the code cases listed in these RGs as suitable alternatives to the ASME BPV and OM Codes for the construction, inservice inspections, and inservice testing of nuclear power plant components. Because the NRC is requiring the use of NUREG-2228 within a condition on Code Case N-847, the NRC is also incorporating by reference NUREG-2228. The ASME publishes the OM Code Cases and lists the code cases in the ASME OM Code edition and on the ASME C&S Connect website. In contrast, the ASME publishes BPV code cases in a separate document and at a different time than the ASME BPV code editions. This final rule identifies the code cases by the edition of the ASME BPV Code or ASME OM Code under which they were published by the ASME.

The following general guidance applies to the use of the ASME code cases approved in the latest versions of the RGs that are incorporated by reference into § 50.55a as part of this final rule. Specifically, the use of the code cases listed in the latest versions

of RGs 1.84, 1.147, and 1.192 are acceptable with the specified conditions when implementing the editions and addenda of the ASME BPV and OM Codes incorporated by reference in § 50.55a.

The approval of a code case in the NRC's RGs constitutes acceptance of its technical position for applications that are not precluded by regulatory or other requirements or by the recommendations in these RGs. The applicant or licensee is responsible for ensuring that use of the code case does not conflict with regulatory requirements or licensee commitments. The code cases listed in the RGs are acceptable for use within the limits specified in the code cases. If the RG states an NRC condition on the use of a code case, then the NRC condition supplements and does not supersede any condition(s) specified in the code case, unless otherwise stated in the NRC condition.

The ASME code cases may be revised for many reasons (*e.g.*, to incorporate operational examination and testing experience and to update material requirements based on research results). On occasion, an inaccuracy in an equation is discovered or an examination, as practiced, is found not to be adequate to detect a newly discovered degradation mechanism.

Therefore, when an applicant or a licensee initially implements a code case, § 50.55a requires that the applicant or the licensee implement the most recent version of that code case, as listed in the RGs incorporated by reference. Code cases superseded by revision are no longer acceptable for new applications unless otherwise indicated.

Section III of the ASME BPV Code applies to new construction (*i.e.*, the edition and addenda to be used in the construction of a plant are selected based on the date of the construction permit and are not changed thereafter, except voluntarily by the applicant or the licensee). Hence, if a Section III code case is implemented by an applicant or a licensee and a later version of the code case is incorporated by reference into § 50.55a and listed in the RG, the applicant or licensee may use either version of the code case (subject, however, to whatever change requirements apply to its licensing basis (*e.g.*, § 50.59)).

A licensee's inservice inspection and inservice testing programs must be updated every 10 years to the latest edition and addenda of the ASME BPV Code, Section XI, and the OM Code, respectively, that were incorporated by reference into § 50.55a and in effect 18

² See **Federal Register** final rule, "Incorporation by Reference of ASME BPV and OM Code Cases" (68 FR 40469; July 8, 2003).

³ Code Cases are categorized by the ASME as one of three types: New, revised, or reaffirmed. A new Code Case provides for a new alternative to specify the ASME Code provisions or addresses a new need. The ASME defines a revised Code Case to be a revision (modification) to an existing Code Case to address, for example, technological advancements in examination techniques or to address NRC conditions imposed in one of the RGs that have been incorporated by reference into § 50.55a. The ASME defines "reaffirmed" as an OM Code Case that does not have any change to technical content, but includes editorial changes.

⁴ The ASME included code cases with the published editions and addenda of the OM Code through the 2017 Edition. Starting with the 2020 Edition, code cases were not published with the OM Code; an applicability index for ASME OM code cases was published. Code cases are available on the ASME website under the "O&M CASES" tab in the left-hand column at <https://go.asme.org/OMcommittee>.

months prior to the start of the next inspection and testing interval. Licensees that were using a code case prior to the effective date of its revision may continue to use the previous version for the remainder of the 120-month inservice inspection or inservice testing interval. This relieves licensees of the burden of having to update their inservice inspection or inservice testing program each time a code case is revised by the ASME and approved for use by the NRC. Code cases apply to specific editions and addenda, and code cases may be revised if they are no longer accurate or adequate, so licensees choosing to continue using a code case during the subsequent inservice inspection or inservice testing interval must implement the latest version incorporated by reference into § 50.55a and listed in the RGs.

The ASME may annul code cases that are no longer required, are determined to be inaccurate or inadequate, or have been incorporated into the BPV or OM Codes. A code case may be revised, for example, to incorporate user experience. The older or superseded version of the code case cannot be applied by the licensee or applicant unless it was applied prior to being annulled or superseded.

If an applicant or a licensee applied a code case before it was listed as superseded, the applicant or the licensee may continue to use the code case until the applicant or the licensee updates its construction Code of Record (in the case of an applicant, updates its application) or until the licensee's 120-month inservice inspection or inservice testing update interval expires, after which the continued use of the code case is prohibited unless NRC authorization is given

under § 50.55a(z). If a code case is incorporated by reference into § 50.55a and later a revised version is issued by the ASME because experience has shown that the design analysis, construction method, examination method, or testing method is inadequate, the NRC will amend § 50.55a and the relevant RG to remove the approval of the superseded code case. Applicants and licensees should not begin to implement such superseded code cases in advance of the rulemaking.

A. ASME Code Cases Approved for Unconditional Use

The code cases discussed in Table I are new, revised, or reaffirmed code cases in which the NRC approves for use without conditions. The table identifies the regulatory guide listing the applicable code case that the NRC approves for use.

TABLE I—ACCEPTABLE CODE CASES

Code Case No.	Published with supplement	Title
Boiler and Pressure Vessel Code Section III (Addressed in RG 1.84, Table 1)		
N-249-17	0 (2019 Edition)	Additional Materials for Subsection NF, Classes 1, 2, 3, and MC Supports Fabricated without Welding, Section III, Division 1.
N-539-1	0 (2017 Edition)	UNS N08367 in Class 2 and 3 Valves, Section III, Division 1.
N-692-1	6 (2015 Edition)	Use of Standard Welding Procedures, Section III, Division 1.
N-721-1	5 (2017 Edition)	Alternative Rules for Linear Piping Supports, Section III, Division 1.
N-801-3	1 (2017 Edition)	Rules for Repair of N-Stamped Class 1, 2, and 3 Components, Section III, Division 1.
N-822-4	7 (2015 Edition)	Application of the ASME Certification Mark, Section III, Divisions 1, 2, 3, and 5.
N-855	2 (2015 Edition)	SB-148 C95800 Valves for Class 3 Construction, Section III, Division 1.
N-856	2 (2015 Edition)	SA-494 Grade CW-12MW (UNS N30002) Nickel Alloy Castings for Construction of NPS 2½ and Smaller Flanged Valves for Class 3 Construction, Section III, Division 1.
N-859	5 (2015 Edition)	Construction of ASME B16.9 Wrought Buttwelding Fittings and ASME B16.11 Forged Fittings Made From SB-366 UNS N04400 Material for Section III, Class 3 Construction, Section III, Division 1.
N-863-1	1 (2017 Edition)	Post Weld Heat Treatment (PWHT) of Valve Seal Welds for P4 and P5A Materials, Section III, Division 1.
N-866	0 (2017 Edition)	Alternative Materials for Construction of Section III, Class 2 Vessels, Section III, Division 1.
N-870-1	4 (2017 Edition)	Rules for the Elimination of External Surface Defects on Class 1, 2, and 3 Piping, Pumps, or Valves After Component Stamping and Prior to Completion of the N-3 Data Report, Section III, Division 1.
N-879	1 (2017 Edition)	Use of Micro-Alloyed Carbon Steel Bar in Patented Mechanical Joints and Fittings, Classes 1, 2, and 3, Section III, Division 1.
N-884	0 (2019 Edition)	Procedure to Determine Strain Rate for Use with the Environmental Fatigue Design Curve Method and the Environmental Fatigue Correction Factor, F _{en} , Method as Part of an Environmental Fatigue Evaluation for Components Analyzed per the NB-3200 Rules, Section III, Division 1.
N-887	6 (with errata issued in 3/19E).	Alternatives to the Requirements of NB-4424.2(a), Figure NB-4250-2, and Figure NB-4250-3, Section III, Division 1.
N-891	0 (2019 Edition)	Alternative Requirements to Appendix XXVI, XXVI-2400, XXVI-4130, and XXVI-4131 for Inspection and Repair of Indentations for Polyethylene Pipe and Piping Components, Section III, Division 1.
Boiler and Pressure Vessel Code Section XI (Addressed in RG 1.147, Table 1)		
N-561-3	0 (2019 Edition)	Alternative Requirements for Wall Thickness Restoration of Class 2 and High Energy Class 3 Carbon Steel Piping, Section XI, Division 1.
N-638-10	1 (2019 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.
N-653-2	2 (2015 Edition)	Qualification Requirements for Full Structural Overlaid Wrought Austenitic Piping Welds, Section XI, Division 1.
N-702-1	1 (2019 Edition)	Alternative Requirements for Boiling Water Reactor (BWR) Nozzle Inner Radius and Nozzle-to-Shell Welds, Section XI, Division 1.
N-716-2	0 (2017 Edition)	Alternative Piping Classification and Examination Requirements, Section XI, Division 1.

TABLE I—ACCEPTABLE CODE CASES—Continued

Code Case No.	Published with supplement	Title
N-768	0 (2019 Edition)	Alternative Volumetric Coverage Requirements for Ultrasonic Examination of Class 1 and 2 Pressure Vessel Weld Joints Greater Than 2 in. (50 mm) in Thickness, Section XI, Division 1.
N-786-3	1 (2017 Edition)	Alternative Requirements for Sleeve Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping, Section XI, Division 1.
N-789-3	1 (2017 Edition)	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping for Raw Water Service, Section XI, Division 1.
N-809	2 (2015 Edition)	Reference Fatigue Crack Growth Rate Curves for Austenitic Stainless Steels in Pressurized Reactor Water Environments, Section XI, Division 1.
N-845-1	6 (2015 Edition)	Qualification Requirements for Bolts and Studs, Section XI, Division 1.
N-848-1	0 (2017 Edition)	Alternative Characterization Rules for Quasi-Laminar Flaws, Section XI, Division 1.
N-851	0 (2015 Edition)	Alternate Method for Establishing the Reference Temperature for Pressure Retaining Materials, Section XI, Division 1.
N-858	2 (2017 Edition)	Alternative Volumetric Coverage Requirements for Ultrasonic Examination of Class 1 Nozzle-to-Vessel Welds, Section XI, Division 1.
N-865	2 (2017 Edition)	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Atmospheric Storage Tanks, Section XI, Division 1.
N-867	0 (2017 Edition)	Clarification of NDE Practical Examination Requirements, Section XI, Division 1.
N-873	1 (2017 Edition)	Examination Requirements for the Core Makeup Tanks, Section XI, Division 1.
N-874	7 (2017 Edition)	Temporary Acceptance of Leakage Through Brazed Joints of Class 3 Copper, Copper-Nickel, and Nickel-Copper Moderate Energy Piping, Section XI, Division 1.
N-877	2 (2017 Edition)	Alternative Characterization Rules for Multiple Subsurface Radially Oriented Planar Flaws, Section XI, Division 1.
N-882	6 (2017 Edition)	Alternative Requirements for Attaching Nonstructural Electrical Connections to Class 2 and 3 Components, Section XI, Division 1.
N-885	0 (2019 Edition)	Alternative Requirements for Table IWB-2500-1, Examination Category B-N-1, Interior of Reactor Vessel, Category B-N-2, Welded Core Support Structures and Interior Attachments to Reactor Vessels, Category B-N-3, Removable Core Support Structures, Section XI, Division 1.
N-892	0 (2019 Edition)	Alternative Requirement for Form OAR-1, Owner's Activity Report, Completion Time, Section XI, Division 1.
Operation and Maintenance Code (Addressed in RG 1.192, Table 1)		
OMN-13, Revision 3	2020 Edition	Performance-Based Requirements for Extending Snubber Inservice Visual Examination Interval at LWR Power Plants.
OMN-15, Revision 3	2020 Edition	Performance-Based Requirements for Extending the Snubber Operational Readiness Testing Interval at LWR Power Plants.
OMN-17, Revision 1	2020 Edition	Alternative Requirements for Testing ASME Class 1 Pressure Relief/Safety Valves.
OMN-18 ⁵	2020 Edition	Alternate Testing Requirements for Pumps Tested Quarterly Within ±20% of Design Flow.
OMN-22	2020 Edition	Smooth Running Pumps.
OMN-23	2020 Edition	Alternative Requirements for Testing Pressure Isolation Valves.
OMN-24	2020 Edition	Alternative Requirements for Testing ASME Class 2 and 3 Pressure Relief Valves (For Relief Valves in a Group of One).
OMN-25	2020 Edition	Alternative Requirements for Testing Appendix I Pressure Relief Valves.
OMN-26	2020 Edition	Alternate Risk-Informed and Margin Based Rules for Inservice Testing of Motor Operated Valves.
OMN-27	2020 Edition	Alternative Requirements for Testing Category A Valves (Non-PIV/CIV)

B. ASME Code Cases Approved for Use With Conditions

The NRC determined that certain code cases, as issued by the ASME, are generally acceptable for use, but that the alternative requirements specified in those code cases must be supplemented in order to provide an acceptable level of quality and safety. Accordingly, the NRC imposes conditions on the use of these code cases to modify, limit, or clarify their requirements. The conditions specify, for each applicable

code case, the additional activities that must be performed, the limits on the activities specified in the code case, and/or the supplemental information needed to provide clarity. These ASME code cases, listed in Table II below, are included in Table 2 of RG 1.84, RG 1.147, and RG 1.192. This section provides the NRC's evaluation of the code cases and the reasons for the NRC's conditions. Notations indicate the conditions duplicated from previous versions of the RG.

⁵ As a result of a public comment, the NRC agreed that the condition to require the slightly more restrictive upper-end values of the acceptable ranges for flow and differential pressure are not necessary to provide reasonable assurance that the implementation of Code Case OMN-18 will demonstrate the acceptable performance of pumps within the scope of the ASME OM Code. Therefore, the NRC deleted the condition proposed and moved OMN-18 to Table I.

TABLE II—CONDITIONALLY ACCEPTABLE CODE CASES

Code Case No.	Published with supplement	Title
Boiler and Pressure Vessel Code Section III (Addressed in RG 1.84, Table 2)		
N-71-20	6 (2015 Edition)	Additional Materials for Subsection NF, Class 1, 2, 3, and MC Supports Fabricated by Welding, Section III, Division 1.
N-155-3	5 (2015 Edition)	Fiberglass Reinforced Thermosetting Resin Pipe, Section III, Division 1.
N-755-4	1 (2017 Edition)	Use of Polyethylene (PE) Class 3 Plastic Pipe, Section III, Division 1.
N-779	8 (2007 Edition) ⁶	Alternative Rules for Simplified Elastic-Plastic Analysis Class 1, Section III, Division 1.
N-852	0 (2015 Edition)	Application of the ASME NPT Stamp, Section III, Divisions 1, 2, 3, and 5.
N-883	5 (2017 Edition)	Construction of Items Prior to the Establishment of a Section III, Division 1 Owner, Section III, Division 1.
N-886	6 (2017 Edition)	Use of Polyethylene Pipe for Class 3, Section III, Division 1.
Boiler and Pressure Vessel Code Section XI (Addressed in RG 1.147, Table 2)		
N-513-5	6 (2017 Edition)	Evaluation Criteria for Temporary Acceptance of Flaws in Moderate Energy Class 2 or 3 Piping and Gate Valves, Section XI, Division 1.
N-516-5	6 (2015 Edition)	Underwater Welding, Section XI, Division 1.
N-597-3	5 (2013 Edition)	Evaluation of Pipe Wall Thinning, Section XI.
N-705-1	2 (2017 Edition)	Evaluation Criteria for Temporary Acceptance of Degradation in Moderate Energy Class 2 or 3 Vessels and Tanks, Section XI, Division 1.
N-766-3	2 (2017 Edition)	Nickel Alloy Reactor Coolant Inlay and Onlay for Mitigation of PWR Full Penetration Circumferential Nickel Alloy Dissimilar Metal Welds in Class 1 Items, Section XI, Division 1.
N-778	0 (2010 Edition)	Alternative Requirements for Preparation and Submittal of Inservice Inspection Plans, Schedules, and Preservice and Inservice Inspection Summary Reports, Section XI, Division 1.
N-831-1	7 (2017 Edition)	Ultrasonic Examination in Lieu of Radiography for Welds in Ferritic or Austenitic Pipe, Section XI, Division 1.
N-847	0 (2017 Edition)	Partial Excavation and Deposition of Weld Metal for Mitigation of Class 1 Items, Section XI, Division 1.
N-864	2 (2017 Edition)	Reactor Vessel Threads in Flange Examinations, Section XI, Division 1.
N-869	6 (2017 Edition)	Evaluation Criteria for Temporary Acceptance of Flaws in Class 2 or 3 Piping, Section XI, Division 1.
N-876	2 (2017 Edition)	Austenitic Stainless Steel Cladding and Nickel Base Cladding Using Ambient Temperature Automatic or Machine Dry Underwater Laser Beam Welding (ULBW) Temper Bead Technique, Section XI, Division 1.
N-878	1 (2017 Edition)	Alternative to QA Program Requirements of IWA-4142, Section XI, Division 1.
N-880	2 (2017 Edition)	Alternative to Procurement Requirements of IWA-4143 for Small Nonstandard Welded Fittings, Section XI, Division 1.
N-889	7 (2017 Edition)	Reference Stress Corrosion Crack Growth Rate Curves for Irradiated Austenitic Stainless Steel in Light-Water Reactor Environments, Section XI, Division 1.
N-890	0 (2019 Edition)	Materials Exempted From G-2110(b) Requirement, Section XI, Division 1.
Operation and Maintenance Code (Addressed in RG 1.192, Table 2)		
OMN-1, Revision 2	2020 Edition	Alternative Rules for Preservice and Inservice Testing of Active Electric Motor-Operated Valve Assemblies in Light-Water Reactor Power Plants.
OMN-3	2020 Edition	Requirements for Safety Significance Categorization of Components Using Risk Insights for Inservice Testing of LWR Power Plants.
OMN-4	2020 Edition	Requirements for Risk Insights for Inservice Testing of Check Valves at LWR Power Plants.
OMN-9	2020 Edition	Use of a Pump Curve for Testing.
OMN-12	2020 Edition	Alternative Requirements for Inservice Testing Using Risk Insights for Pneumatically and Hydraulically Operated Valve Assemblies in Light-Water Reactor Power Plants (OM-Code 1998, Subsection ISTC).
OMN-19	2020 Edition	Alternative Upper Limit for the Comprehensive Pump Test.
OMN-20	2020 Edition	Inservice Test Frequency.

1. ASME BPV Code, Section III Code Cases (RG 1.84)

Code Case N-71-20 [Supplement 6, 2015 Edition]

Type: Revised.

Title: Additional Materials for Subsection NF, Class 1, 2, 3, and MC

Supports Fabricated by Welding, Section III, Division 1.

The conditions on Code Case N-71-20 are the same as the conditions on N-71-19 that were approved by the NRC in Revision 38 of RG 1.84. When the ASME revised N-71, the code case was not modified in a way that would make

⁶ Correcting editorial error from proposed rule to final rule to state correct supplement 8.

it possible for the NRC to remove the conditions. Therefore, the conditions are retained in Revision 39 of RG 1.84.

Code Case N-155-3 [Supplement 5, 2015 Edition]

Type: Revised.

Title: Fiberglass Reinforced Thermosetting Resin Pipe, Section III, Division 1.

The conditions on Code Case N-155-3 are the same as the conditions on N-155-2 that were approved by the NRC in Revision 38 of RG 1.84. When the ASME revised N-155-2, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions are retained in Revision 39 of RG 1.84.

Code Case N-755-4 [Supplement 1, 2017 Edition]

Type: Revised.

Title: Use of Polyethylene (PE) Class 3 Plastic Pipe, Section III, Division 1.

This code case is applicable only to butt fusion joints and the content was incorporated into Mandatory Appendix XXVI in the 2015 Edition of Section III of the ASME Code. The relevant provisions of Code Case N-755-4 are the same as those in Mandatory Appendix XXVI. Therefore, the NRC is applying the same conditions to Code Case N-755-4. The NRC has determined that these conditions are necessary to ensure structural integrity of the polyethylene piping and fusion joints when the polyethylene piping is used in Class 3 safety-related applications.

Code Case N-779 [Supplement 8, 2007 Edition]

Type: New.

Title: Alternative Rules for Simplified Elastic-Plastic Analysis Class 1, Section III, Division 1.

The NRC finds the code case satisfactory and technically acceptable for use only with code editions Summer 1979 and later. This code case, as written, is not acceptable for use with editions of Section III earlier than the Summer 1979 Edition, which included the term Delta T1 in NB-3600 Equation 10, because the code case is based on equations used in the Summer 1979 Edition and later editions of the Code.

Code Case N-852 [Supplement 0, 2015 Edition]

Type: New.

Title: Application of the ASME NPT Stamp, Section III, Divisions 1, 2, 3, and 5.

The NRC approved this code case with a condition in a § 50.55a rulemaking issued in 2017 (82 FR

32934; July 18, 2017), and the supplement was not modified in a way that would make it possible for the NRC to remove the condition. Therefore, the condition is retained in Revision 39 of RG 1.84.

Code Case N-883 [Supplement 5, 2017 Edition]

Type: New.

Title: Construction of Items Prior to the Establishment of a Section III, Division 1 Owner, Section III, Division 1.

This code case allows certificate holders to construct all items prior to the establishment of an Owner. Code Case N-883 was developed to address international stakeholders and identify the ASME as a global standard development organization. The NRC's main concern is that without the designation of an Owner, the NRC would not be able to provide regulatory oversight of the ASME certificate holder manufacturing the items, which is not consistent with appendix B to 10 CFR part 50 and the requirements in § 50.55(a) for a basic component. During discussions with the ASME staff on this code case, it was determined that the NRC would condition this code case based on regulatory oversight, as would other regulatory bodies depending on each countries' specific regulations. This is evident as this code case specifies that the "the items have been constructed by [ASME] Certificate Holders who are specifically authorized by the Regulatory Authority having jurisdiction over the Owner's facility to construct items using this Case." The condition, "This Code Case may be used for the construction of items by a holder of a construction permit, operating license, or combined license under 10 CFR part 50 or part 52," provides this specific regulatory authorization thereby ensuring the appropriate regulatory oversight. As a result of public comment, the NRC clarified the condition on the code case as follows: "This Code Case may only be used for the construction of items by a holder of a construction permit, operating license, or combined license under 10 CFR part 50 or 10 CFR part 52. This Code Case may not be used by a holder of a manufacturing license or standard design approval or by a design certification applicant."

Code Case N-886 [Supplement 6, 2017 Edition]

Type: New.

Title: Use of Polyethylene Pipe for Class 3, Section III, Division 1.

This code case is applicable for the use of polyethylene pipe in Section III,

Class 3, Division 1 above ground applications. This code case refers to Mandatory Appendix XXVI of Section III of the ASME Code. The 2015 Edition of Appendix XXVI contains requirements for butt fusion joints for buried piping. The 2017 Edition of Appendix XXVI contains requirements for butt fusion and electrofusion joints for buried piping. Therefore, all the conditions as noted in Section III of the 2015-2017 Code Edition rule related to buried piping Mandatory Appendix XXVI apply to this code case. The same conditions as buried piping also apply to above ground application. One additional condition is needed for above ground applications related to fire protection. A condition on fire protection is needed because polyethylene material is combustible and above ground uses are more susceptible to fire hazards.

The NRC agreed with the public comments to remove conditions 1, 2, and 3 because the three conditions are the same as those for Section III, Mandatory Appendix XXVI, which was conditionally accepted by the NRC in § 50.55a. It is redundant to specify these conditions to Code Case N-886.

As a result of public comment, the NRC clarified condition 4 to state that for aboveground applications, licensees must ensure that plant fire protection program addresses any high-density polyethylene (HDPE) consistent with the requirements of 10 CFR 50.48. The licensee must identify the specific program to satisfy this objective such as the plant fire protection program. Therefore, the condition is retained in Revision 39 of RG 1.84.

The NRC agreed with the public comment to remove condition 5 because the requirement that carbon black distribution in HDPE pipe to be homogenous to prevent windows and delamination is a pipe manufacturing process issue. The staff determined that the requirements in Mandatory Appendix XXVI-2231(b) adequately address this issue. Code Case N-886 is only for design, and all materials must meet the requirements of Appendix XXVI.

2. ASME BPV Code, Section XI Code Cases (RG 1.147)

Code Case N-513-5 [Supplement 6, 2017 Edition]

Type: Revised.

Title: Evaluation Criteria for Temporary Acceptance of Flaws in Moderate Energy Class 2 or 3 Piping and Gate Valves, Section XI, Division 1.

Code Case N-513-5 contains provisions to permit temporary

acceptance of flaws, in moderate energy Class 2 or 3 piping, including elbows, pipe bends, reducers, expanders, branch tees, and gate valves without performing a repair/replacement activity for a limited period. The code case contains provisions regarding the scope, flaw characterization, periodic leakage monitoring, flaw evaluation, and augmented examinations. The NRC finds that the provisions of N-513-5 are acceptable except that the augmented examination provisions in Section 5 of the code case require clarification.

When a licensee applies N-513-5 to disposition a through-wall leak or wall thinning in a piping system, Section 5 of the code case requires augmented examinations for flaws and significant flaws. The augmented examination requirements in N-513-5 are the same as in Code Case N-513-3.

In 2018, the NRC found an instance where a licensee misinterpreted the provisions in Section 5 of N-513-3 and did not perform the required augmented examinations to disposition a through-wall leak in a service water system pipe. Other licensees have similarly misinterpreted the augmented examination provisions in Section 5 of N-513-3. The NRC found that the issue stems from the definition of the terms “flaw” and “significant flaw” in Sections 5(b) and 5(c) of N-513-3, respectively. The NRC, therefore, imposes two conditions to define “flaw” and “significant flaw” as those terms are used in Section 5 of N-513-5. Licensees would be required to apply these definitions to Section 5 when using the code case.

The first condition defines a “flaw” as a non-through-wall planar or nonplanar flaw with a wall thickness less than 87.5 percent of the nominal wall thickness of the pipe or the design minimum wall thickness. The NRC notes that the pipe wall thickness at the time of the plant construction may deviate from the nominal pipe wall thickness slightly as part of manufacturing process. The generally accepted deviation is 12.5 percent of the nominal pipe wall thickness or the design minimum wall thickness.

The second condition defines “significant flaw” as any pipe location that does not satisfy the provisions of Section 3 of N-513-5 or if any detected flaw that has a depth greater than 75 percent of the pipe wall thickness. The NRC staff notes that the criterion of the 75 percent wall thickness criterion originates from the provisions of IWC/IWD-3643 of the ASME Code, Section XI, which prohibits a flaw that exceeds 75 percent of the pipe wall thickness to remain in service. Under Section 5 of

N-513-5, a planar flaw that exceeds 75 percent of the pipe wall thickness may remain in service; however, the licensee must perform an augmented examination. The NRC agreed with the public comment that Condition 2 needed clarification. As a result, the NRC revised Condition No. 2 as follows: “For the purposes of section 5 of Code Case N-513-5, the term “significant flaw” means any flaw found during augmented examinations performed per Section 5 of N-513-5 that has a depth greater than 75 percent of the pipe wall thickness or that does not satisfy the applicable requirements of the flaw evaluation per Section 3 of N-513-5. If a significant flaw as defined above is present, then the licensee must perform the additional augmented examination specified in Section 5.”

Code Case N-516-5 [Supplement 6, 2015 Edition]

Type: Revised.

Title: Underwater Welding, Section XI, Division 1.

In the rulemaking for the 2009 Addenda through 2013 Editions of the ASME Code (82 FR 32934; September 18, 2017), the NRC-specified conditions that should be applied to Section XI, Article IWA-4660 when performing underwater welding on irradiated materials. These conditions provide guidance on what level of neutron irradiation and/or helium content would require review and approval by the NRC because of the impact of neutron fluence on weldability. These conditions provide separate criteria for three generic classes of material: Ferritic material, austenitic material other than P-No. 8 (e.g., nickel-based alloys) and austenitic P-No. 8 material (e.g., stainless steel alloys). These conditions are currently located in § 50.55a(b)(2)(xii)(A) and (B). The conditions located in § 50.55a(b)(2)(xii)(A) and (B) are identical to the conditions that were imposed on Code Case N-516-4 that were approved by the NRC in Revision 19 of RG 1.147. When the ASME revised N-516, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions are retained in Revision 20 of RG 1.147 by stating the provisions of § 50.55a(b)(2)(xii)(A) and (B) must be met when applying this code case.

Code Case N-597-3 [Supplement 5, 2013 Edition]

Type: Revised.

Title: Evaluation of Pipe Wall Thinning, Section XI.

Based on public comments, the NRC found that existing Condition 2(b) references Figure-3622.1(a)(1), which does not exist in Code Case N-597-3. The NRC revised Condition 2(b) in the final rule to reference Figure 3622-1 of the code case.

Code Case N-705-1 [Supplement 2, 2017 Edition]

Type: Revised.

Title: Evaluation Criteria for Temporary Acceptance of Degradation in Moderate Energy Class 2 or 3 Vessels and Tanks, Section XI, Division 1.

The condition on Code Case N-705-1 is identical to the condition on N-705 that was approved by the NRC in Revision 19 of RG 1.147. When the ASME revised N-705, the code case was not modified in a way that would make it possible for the NRC to remove the condition. Therefore, the condition is retained in Revision 20 of RG 1.147.

Code Case N-766-3 [Supplement 2, 2017 Edition]

Type: Revised.

Title: Nickel Alloy Reactor Coolant Inlay and Onlay for Mitigation of Pressurized Water Reactor (PWR) Full Penetration Circumferential Nickel Alloy Dissimilar Metal Welds in Class 1 Items, Section XI, Division 1.

The conditions on Code Case N-766-3 are identical to the conditions on N-766-1 that were approved by the NRC in Revision 19 of RG 1.147. When the ASME revised N-766, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions are retained in Revision 20 of RG 1.147.

Code Case N-778 [Supplement 0, 2010 Edition]

Type: New.

Title: Alternative Requirements for Preparation and Submittal of Inservice Inspection Plans, Schedules, and Preservice and Inservice Inspection Summary Reports, Section XI, Division 1.

Code Case N-778 was originally listed in Table 2 of Revision 18 of RG 1.147 with two conditions. As a result of public comments, the NRC revised the second condition on Code Case N-778 to be consistent with Code Case N-892 by increasing the time period for submittal of the inservice inspection summary report to 120 days following the completion of each refueling outage.

Code Case N-831-1 [Supplement 7, 2017 Edition]

Type: Revised.

Title: Ultrasonic Examination in Lieu of Radiography for Welds in Ferritic or Austenitic Pipe, Section XI, Division 1.

The condition on Code Case N-831-1 is identical to the condition on N-831 that was approved by the NRC in Revision 19 of RG 1.147. When ASME revised N-831, the code case was not modified in a way that would make it possible for the NRC to remove the condition. Therefore, the condition is retained in Revision 20 of RG 1.147.

Code Case N-847 [Supplement 0, 2017 Edition]

Type: New.

Title: Partial Excavation and Deposition of Weld Metal for Mitigation of Class 1 Items, Section XI, Division 1.

The ASME Code Case N-847 provides guidelines for a repair/mitigation process for welds. The process, excavation and weld repair (EWR), removes susceptible material from the outside diameter of the pipe, and replaces it with more resistant weld material. This technique allows for the potential of two mitigation methods, the use of more crack-resistant material and the potential for compressive stresses on the inside surface of the repaired/mitigated weld to arrest or prevent cracking. Finally, the excavation can be done 360-degrees around the weld or only for a partial arc of the weld.

The code case would allow for application of this process to both BWR and PWR designs. However, the EWR process, as defined in this code case, has certain challenges addressing the cracking mechanisms in these operating environments and materials. In addition, the regulatory requirements or guidelines related to the code case vary depending on the design of the reactor. For PWR designs, the inservice inspection rules are provided by § 50.55a(g)(6)(ii)(F), which mandates the implementation of a version of ASME Code Case N-770-5. For BWR designs, the inservice inspection guidelines are provided by Generic Letter 88-01, "NRC Position on Intergranular Stress Corrosion Cracking (IGSCC) in BWR Austenitic Stainless Steel Piping," or BWRVIP-75-A, "BWR Vessel and Internals Project Technical Basis for Revisions to Generic Letter 88-01 Inspection Schedules." Therefore, the NRC is imposing six conditions to ensure the inservice inspection frequency guidelines of the code case are consistent with the previous requirements and guidance, which are based on the effectiveness of the overall design of the repair/mitigation to address the various cracking mechanisms of these operating reactor designs.

The first condition is a continuation of the condition of § 50.55a(g)(6)(ii)(F)(16), which requires

that a partial arc EWR, as described in Inspection Item O of ASME Code Case N-770-5, cannot be used without NRC review and approval for PWR designs. The NRC notes that the issues addressed in the final rule incorporating by reference the 2015 and 2017 Editions of the ASME BPV Code and the 2015 and 2017 Editions of the ASME OM Code remain applicable, and further apply to BWR design application of a partial arc EWR. These concerns are for the effectiveness of the repair through a weld residual stress calculation and flow growth analysis to confirm design of the mitigation for the required inspection interval, non-destructive examination uncertainty analysis of the as-found flaw remaining in the reactor coolant pressure boundary, and the potential for further crack initiation or growth. The NRC requires, through the first condition, that approval of the use of this code case is only for the application of the 360-degree EWR.

The second condition is related to Figure 1A and Figure 1B of the code case. The NRC has experience with relief request submittals, where the details associated with the configuration of the prep area, where the defect is being removed, have shown sharp bottom edges and steep walls. This geometry can result in welding issues, which could result in unfused material, leading to stress risers, which may promote cracking. The NRC requires, through the second condition, that the intersection points at the interface between EWR metal and existing base metal must be rounded to minimize stress concentration.

The third condition is related to Section 2(d) of the code case, which discusses the flaw evaluations required for the design considerations of the EWR. In recent testing conducted for the NRC measurable stress corrosion cracking (SCC) growth was detected past the interface between the SCC-susceptible and less susceptible material. It was demonstrated that the crack can branch and propagate in a direction normal to the original direction along a SCC-susceptible path. In the Alloy 52M deposited onto Alloy 182 specimens tested, this occurred in the diluted region of the Alloy 52M material as well as the weld metal. The NRC requires, through the third condition, that flaw analysis include the potential for crack growth through the dilution zone including crack branching. As NRC-approved crack growth rates are not available for all material types (e.g., Alloy 690 weld material), the alternative requirements for development of crack growth rates should be consistent with ASME

Section XI Appendix C, "Flaw Growth Rate Due to Stress Corrosion Cracking," C-3220(a). As a result of public comment, the NRC agrees this condition should be updated to reference Section 2(d)(1), rather than 2(d)(2) as discussed in the proposed rule (86 FR 7820, February 2, 2021), for nickel-based alloys. The NRC clarified the condition to state the evaluation in Section 2(d)(1) of the code case must include evaluation of crack growth into the Alloy 690 weld material, including the dilution zones and allowing change in flaw growth direction.

The fourth condition is related to Section 2 of the code case. The NRC is requiring the use of NUREG-2228, because it provides a proven method for validating the weld residual stress analysis methodology. Because the NRC requires the use of NUREG-2228 within this condition on the requirements in the code case, the NRC is incorporating by reference NUREG-2228 into § 50.55a(a)(3)(iv).

The fifth condition is related to the longer-term volumetric inspection frequencies of Table 1, including notes (1), (3), and (4). These notes provide the BWR design inspection frequency of various EWR types based on Generic Letter 88-01 (1988) as supplemented by Generic Letter 88-01, Supplement 1 (1992), "NRC Position on Intergranular Stress Corrosion Cracking (IGSCC) in BWR Austenitic Stainless Steel Piping," or BWRVIP-75-A, "BWR Vessel and Internals Project Technical Basis for Revisions to Generic Letter 88-01 Inspection Schedules." The NRC has concluded that the inspection requirements for EWRs for BWRs need to be augmented.

The first volumetric examination following application of BWR EWR-2A, EWR-1B, and EWR-2B welds is performed to verify effectiveness of the repair/mitigation before the new weld can be placed in a longer-term volumetric inspection frequency. The code case allows licensees the option of performing this examination during the first or second refueling outage after installation. However, based on the lower operating temperatures of a BWR (approximately 546 °F to 558 °F), and hence the potential slow crack growth rate of the remaining flaw left in service, the NRC has concluded that the examination should occur during the second refueling outage after the EWR application to provide adequate time for any potential measurable flaw growth to occur or in the case of an EWR-2A, for crack initiation and growth to occur.

The long-term volumetric inspections for BWRs require modification because: (a) For EWR-1A EWRs, the augmented

inspection requirements are consistent with the conditions of the inspection frequencies of Code Case N-770-5. These inspection frequency requirements were previously developed by the NRC based on the capabilities of the EWR process to address stress corrosion cracking while providing significant credit for the use of hydrogen water chemistry/noble metal chemical addition controls; and (b) for EWR-1B EWRs, the design that would allow a crack to be left in service, should not be allowed to go uninspected for the remainder of plant life. Therefore, the NRC requires the long-term volumetric inspection of these welds at each 10-year inservice inspection interval. The NRC notes that this condition is consistent with the NRC condition established in § 50.55a for Inspection Item N-1 EWRs (EWR that meets stress criteria; however, a crack is present).

The sixth condition is related to Table 1, Note (1), and the option to use an unspecified alternative to determine examination frequencies and scope expansion criteria. Note (1) specifies the use of NRC Generic Letter 88-01 and includes BWRVIP-75-A as an example of an alternative. The NRC has concluded that NRC Generic Letter 88-01 (1988), as supplemented by Generic Letter 88-01, Supplement 1 (1992), or BWRVIP-75-A, are acceptable, subject to the fifth condition, to determine examination frequencies and scope expansion criteria. However, Note (1) would allow the use of other, unknown alternatives and does not provide criteria to ensure alternatives are adequate for this purpose. Therefore, to ensure that licensees use an adequate standard to determine examination frequencies and scope expansion criteria, the sixth condition requires that licensees must not use an alternative other than those specified in Note (1).

Code Case N-864 [Supplement 2, 2017 Edition]

Type: New.

Title: Reactor Vessel Threads in Flange Examinations, Section XI, Division 1.

Code Case N-864 eliminates the required ASME Code, Section XI examination for the reactor vessel threads-in-flange for all inservice inspection intervals. The NRC has previously granted alternatives under § 50.55a(z) that eliminate the reactor pressure vessel threads-in-flange examinations (ASME Section XI, Examination Category B-G-1, Item No. B6.40) for up to two inservice inspection intervals through the NRC's alternative request process. For

alternatives that requested elimination of the examination for a second consecutive 10-year inservice inspection interval, the NRC has been requesting additional information on activities performed to ensure that the condition of the reactor pressure vessel threads-in-flange receives some level of monitoring. These activities typically have included care and maintenance of the reactor vessel threads-in-flange (and studs) whenever the closure head is removed. The NRC has limited approval of such requests to two subsequent inservice inspection intervals because the NRC has determined that complete elimination of the examinations does not provide adequate protection against long-term degradation of the threads-in-flange. The NRC is imposing conditions on the use of Code Case N-864 that are consistent with the limits the NRC has placed on similar alternatives requests.

The first condition in Code Case N-864 requires that the reactor pressure vessel threads-in-flange examinations (ASME Section XI, Examination Category B-G-1, Item No. B6.40) must be performed in at least every third 10-year ISI interval. This condition also limits the application of Code Case N-864 at facilities that have been authorized under § 50.55a(z) to use alternatives that eliminate reactor pressure vessel threads-in-flange examinations to ensure that the required examination is performed at least every third 10-year inservice inspection interval.

The second condition in Code Case N-864 ensures that sufficient monitoring and maintenance activities are performed and documented when the code case is applied. As a result of public comments, the NRC clarified that performing and documenting the facility's maintenance procedures for removal, care, and visual inspection of the reactor head closure studs and threads in flange during each refueling outage are sufficient to satisfy the second condition.

Code Case N-869 [Supplement 6, 2017 Edition]

Type: New.

Title: Evaluation Criteria for Temporary Acceptance of Flaws in Class 2 or 3 Piping, Section XI, Division 1.

Code Case N-869 contains provisions for temporary acceptance of flaws, including through-wall flaws in Class 2 or 3 piping including elbows, pipe bends, reducers, and branch tees, whose maximum operating pressure is greater than 275 psig and does not exceed 600 psig, without performing a repair/replacement activity. The code case

contains provisions regarding the scope, flaw characterization, periodic leakage monitoring, flaw evaluation, and augmented examinations. The NRC finds that the code case provides reasonable assurance that structural integrity of degraded piping will be maintained until the next scheduled refueling outage. However, the NRC finds that the augmented examination provisions in Section 5 of the code case are unclear and need additional clarification.

When a licensee applies N-869 to disposition a through-wall leak or wall thinning in a piping system, Section 5 of the code case requires augmented examinations for flaws and significant flaws. The augmented examination requirements in N-869 are the same as in Code Case N-513-3.

In 2018, the NRC found an instance where a licensee misinterpreted the provisions in Section 5 of N-513-3 and did not perform the required augmented examinations to disposition a through-wall leak in a service water system pipe. Other licensees have similarly misinterpreted the augmented examination provisions in Section 5 of N-513-3. The NRC found that the issue stems from the definition of the terms "flaw" and "significant flaw" in Sections 5(b) and 5(c) of N-513-3, respectively. The NRC, therefore, imposes two conditions to define "flaw" and "significant flaw" as those terms are used in Section 5 of N-869. Licensees would be required to apply these definitions to Section 5 when using the code case.

The first condition defines a "flaw" as a non-through-wall planar or nonplanar flaw with a wall thickness less than 87.5 percent of the nominal wall thickness of the pipe or the design minimum wall thickness. The NRC notes that the pipe wall thickness at the time of the plant construction may deviate from the nominal pipe wall thickness slightly as part of manufacturing process. The generally accepted deviation is 12.5 percent of the nominal pipe wall thickness or the design minimum wall thickness.

The second condition defines "significant flaw" as any pipe location that does not satisfy the provisions of Section 3 of N-869 or if any detected flaw that has a depth greater than 75 percent of the pipe wall thickness. The NRC staff notes that the 75 percent wall thickness criterion originates from the provisions of IWC/IWD-3643 of the ASME Code, Section XI, which prohibit a flaw that exceeds 75 percent of the pipe wall thickness to remain in service. Under Section 5 of N-869, a planar flaw that exceeds 75 percent of the pipe wall

thickness may remain in service; however, the licensee needs to perform an augmented examination.

Code Case N-876 [Supplement 2, 2017 Edition]

Type: New.

Title: Austenitic Stainless Steel Cladding and Nickel Base Cladding Using Ambient Temperature Automatic or Machine Dry Underwater Laser Beam Welding (ULBW) Temper Bead Technique, Section XI, Division 1.

Some irradiated stainless steel reactor vessel internal components are susceptible to experiencing irradiation assisted stress corrosion cracking. Code Case N-876 provides guidelines for repair welding the irradiated stainless steel components inside the reactor vessel. Code Case N-876 provides an alternative to the cladding temper bead repair rules of Section XI, IWA-4400, which requires preheat and postweld heat treatment. This alternative establishes new rules governing ambient temperature temper bead cladding repairs using the ULBW process.

The NRC is imposing two conditions on this code case. The first condition that must be applied when performing ULBW on irradiated materials provides guidance on what level of neutron irradiation and/or helium content would require review and approval by the NRC because of the impact of neutron fluence on weldability. The second condition limits the depth of the cladding repair due to concerns with the fracture toughness of the base metal.

The technical basis for imposing conditions on the welding of irradiated materials are that neutrons can generate helium atoms within the metal lattice through transmutation of various isotopes of boron and/or nickel. At high temperatures, such as occurs during welding, these helium atoms rapidly diffuse through the metal lattice, coalescing and forming helium bubbles at the grain boundaries. In sufficient concentration, these helium bubbles can cause grain boundary cracking that occurs in the fusion zones and heat affected zones during the heat-up/cool-down cycle.

The first condition applies conditions already applicable to Code Case N-516-5 "Underwater Welding Section XI, Division 1," that the provisions of § 50.55a(b)(2)(xii)(A) and (B) must be met. This regulation provides limits on specific levels of neutron irradiation and/or helium content, above which welding is prohibited without prior NRC review and approval. The NRC is imposing the same condition to uses of Code Case N-876.

The second condition is necessary because the code case does not require impact testing of the base metal heat affected zone (HAZ) to verify adequate fracture toughness. The code case allows the depth of the repair cavity into the ferritic base metal to be up to 1/4". This would allow welding directly to the base metal; thus, it will affect the fracture toughness of the base metal in the HAZ. Therefore, the NRC is imposing a condition restricting the use of the code case to repairs where at least 1/8" of cladding remains. The basis for the 1/8" limit is that this amount of austenitic material between the ferritic base metal and the first weld layer has generally been considered to sufficiently limit the heat input to the base metal such that deleterious effects on the fracture toughness will not occur; therefore, impact testing of the base metal is not necessary. The NRC notes that Code Case N-803, which is approved without conditions, allows repair of ferritic base material using nonferritic weld filler material based on welding procedure qualifications performed using tensile tests, side bends, and impact tests, and could be used to perform a cladding repair in which excavation into the base metal is required.

Code Case N-878 [Supplement 1, 2017 Edition]

Type: New.

Title: Alternative to QA Program Requirements of IWA-4142, Section XI, Division 1.

Code Case N-878 provides alternatives to the quality assurance requirements in IWA-4142 for procurement of Class 1, 2, or 3 non-welded fittings. This code case addresses the testing and certification of material used in the manufacture of non-welded fittings, but does not address how the licensee must ensure that the procured non-welded fittings meet the design and testing requirements of the ASME Code, Section III, NB/NC/ND-3671.7 for Class 1, 2, or 3 applications. Verification that the Section III requirements for the design and testing of these non-welded fittings have been met prior to use is essential in ensuring the structural integrity of these Class 1, 2 and 3 systems is maintained. Therefore, the NRC is imposing conditions for the licensee to verify the design and testing activities associated with qualification of non-welded fittings required by Section III, NB/NC/ND-3671.7 that are performed by the fabricator.

The first condition states for ASME Section III items, the Licensee must review the fabricator's design

documentation and methods to ensure the fittings design is in compliance with the Licensee's design specifications, and ASME Section III NB/NC/ND-3671.7 requirements; and either (1) supervise and monitor the performance qualification tests of the fittings to ensure the design is in compliance with the Licensee's design specifications and ASME Section III NB/NC/ND-3671.7, or (2) the Licensee or Repair/Replacement Organization conducts qualification tests of the fittings or conducts design analyses to ensure the design is in compliance with the Licensee's design specifications and ASME Section III NB/NC/ND-3671.7. In response to public comments, the NRC clarified that for ASME Section III items, this condition applies only for those licensees that implemented ASME Code, Section III design requirements for their original construction code and/or the licensees that have upgraded their original design requirements to ASME Code, Section III.

The second condition states that the Licensees must give the Authorized Nuclear Inservice Inspector an opportunity to review the design report prior to installation.

Code Case N-880 [Supplement 2, 2017 Edition]

Type: New.

Title: Alternative to Procurement Requirements of IWA-4143 for Small Nonstandard Welded Fittings, Section XI, Division 1.

Code Case N-880 provides alternatives to the material procurement requirements of IWA-4142 and IWA-4143 for small nonstandard welded fittings. This code case does not address how the licensee must ensure the procured welded fittings meet the design and testing requirements of the ASME Code, Section III, NB/NC/ND-3671.7 for Class 1, 2, or 3 applications. Verification that the Section III requirements for the design and testing of these welded fittings have been met prior to use is essential in ensuring the structural integrity of these Class 1, 2 and 3 systems is maintained. Therefore, the NRC is imposing conditions requiring the licensee to verify the design and testing activities associated with qualification of welded fittings required by Section III, NB/NC/ND-3671.7 that are performed by the fabricator.

The first condition states for ASME Section III items, the Licensee must review the fabricator's design documentation and methods to ensure the fittings design is in compliance with the Licensee's design specifications, and ASME Section III NB/NC/ND-3671.7 requirements; and either: (1) Supervise

and monitor the performance qualification tests of the fittings to ensure the design is in compliance with the Licensee's design specifications and ASME Section III NB/NC/ND-3671.7, or (2) the Licensee or Repair/Replacement Organization conducts qualification tests of the fittings or conducts design analyses to ensure the design is in compliance with the Licensee's design specifications and ASME Section III NB/NC/ND-3671.7. In response to public comments, the NRC clarified that for ASME Section III items, this condition applies only for those licensees that implemented ASME Code, Section III design requirements for their original construction code and/or the licensees that have upgraded their original design requirements to ASME Code, Section III.

The second condition states that the Licensees must give the Authorized Nuclear Inservice Inspector an opportunity to review the design report prior to installation.

Code Case N-889 [Supplement 7, 2017 Edition]

Type: New.

Title: Reference Stress Corrosion Crack Growth Rate Curves for Irradiated Austenitic Stainless Steel in Light-Water Reactor Environments, Section XI, Division 1.

Code Case N-889 provides a new crack growth rate (CGR) law for irradiation-assisted stress corrosion cracking. The code case is applicable to wrought austenitic stainless steels and associated weld metals, as well as cast austenitic stainless steels. The proposed CGR law requires the user to first calculate irradiated yield stress from the dose to the material. There are two yield stress models: One for Molybdenum bearing stainless steels and one for stainless steels without Molybdenum. Once irradiated yield stress has been determined, the user calculates the CGR as a function of applied crack driving force and temperature.

The staff identified three concerns with the technical basis of this code case. The first concern relates to the limited CGR data at dose levels greater than 20 displacements per atom (dpa). The proposed CGR law indicates that the irradiated yield stress (and, consequently, the CGR) increases with fluence up to a dose of 20 dpa, at which point the irradiated yield's stress ceases to increase appreciably with further dose accumulation. While the data at dose levels greater than 20 dpa does show a plateau behavior in the CGR, the staff's analyses of that data suggests that areas of high CGR were averaged over the industry calculation of CGR, which increases the uncertainty in the high

dose CGRs. Therefore, due to the limited data and the associated high uncertainty at high fluence, the staff's confidence in CGRs at dose levels greater than 20 dpa is low.

The second concern is the effects of uncertainty in the irradiated yield strength value for an individual material-heat. This topic is discussed in Section 4.7 of the technical basis report for Code Case N-889. The NRC also conducted separate analyses. While the results of the NRC's findings are generally consistent with the results in Section 4.7, the interpretation of their significance is not consistent. For materials with yield strengths greater than 600 MPa (*i.e.*, more highly-irradiated materials), the expected CGR for a material with a yield strength in the 95th percentile is less than two times the CGR predicted by the code case, which is not a significant difference. However, for materials with yield strength values less than 250 MPa (*i.e.*, unirradiated or minimally irradiated materials), the expected CGR for a material in the 95th percentile can be more than five times greater than the CGR predicted by the code case. Hence, the NRC's concern is that the CGRs for individual low yield strength materials, or materials with low fluence, could be significantly underpredicted by the code case.

The final concern is related to the data used in the development of the irradiated yield stress model. The methodology for addressing cold work in this model was developed in MRP-135, Revision 1, while the model itself was developed in MRP-211, Revision 0. The database underlying the model included hundreds of yield strength measurements on initially annealed and cold-worked Types 304, 316, and 347/348 stainless steel materials. However, most of the data were for annealed Type 304 and cold-worked Type 316 stainless steels. Revision 1 of MRP-211 contained additional yield strength data, including significantly more data for cold-worked Types 304 and 347 stainless steel. The authors of the code case, as documented in Section 4.5 of the Additional Basis Report dated February 5, 2018, evaluated the code case yield stress model with some of this additional data and found agreement between the model and the additional data. However, the code case authors excluded new data for cold-worked Type 304 and 347 stainless steel materials. Therefore, the technical basis document for Code Case N-889 does not directly address whether cold-worked Type 304 and 347 (non-Molybdenum bearing) materials are adequately predicted by the irradiated yield

strength model in the code case. The NRC is imposing three conditions on this code case.

The first condition states that this code case may not be applied for neutron exposures greater than 20 dpa. This condition addresses the NRC concern that there is sparse data with high uncertainty beyond 20 dpa. Given that the predicted CGR saturates at higher fluence, this condition prevents potential underprediction of the CGR in this fluence regime.

The second condition states that at dose levels below 0.75 dpa, the user must use the higher of the Code Case N-889 or the Section XI, Nonmandatory Appendix C, C-8520 CGR predictions. This condition addresses the NRC concern related to possible underprediction of CGR in Code Case N-889 for materials with calculated irradiated yield strength less than 250 MPa.

The final condition states that the irradiated yield stress model for cold-worked Molybdenum bearing materials must be used for cold-worked non-Molybdenum bearing stainless steels (including Type 204 and 247 stainless steels). This condition addresses the NRC concern that data for cold-worked non-Molybdenum bearing steels were not appropriately considered during development of Code Case N-889. The NRC performed its own evaluation of cold-worked Type 304 and 347 stainless steels in the MRP-211 database and found that the yield strength was better predicted by the code case's Molybdenum bearing model than with the code case's non-Molybdenum bearing model.

Code Case N-890 [Supplement 0, 2019 Edition]

Type: New.

Title: Materials Exempted From G-2110(b) Requirements, Section XI, Division 1.

Code Case N-890 provides an alternative to Section XI, G-2110(b) which removes the requirement of, "obtaining fracture toughness data for at least three heats," for using the static fracture toughness curve (K_{Ic}) curve for specific materials with a minimum specified yield strength at room temperature between 50 kilopound per square inch (ksi) and 90 ksi. Code Case N-890 would allow the toughness of four ferritic steels (SA-508 Grade 2 Class 2, SA-508 Grade 3 Class 2, SA-533 Type A Class 2 and SA-533 Type B Class 2) with specified minimum yield strength greater than 50 ksi to be characterized by Figure G-2110-1 (*i.e.*, the Section XI K_{Ic} curve).

The NRC identified one technical concern when reviewing the technical basis of this code case. The technical basis provided appropriate data to justify use of the K_{Ic} curve for several materials listed in the code case. However, for SA-533 Type B, Class 2 materials, the NRC observed that in the technical basis document, there is no fracture toughness data associated with the weld and heat affected zone to support exclusion of the fracture toughness testing requirements for these materials.

As such, the imposed NRC condition requires the user to comply with the provisions of Section III, NB-2300 and Section III, G-2110(b) to demonstrate the applicability of the ASME K_{Ic} curve to SA-533 Type B, Class 2 material. These provisions require the user to generate the necessary toughness data to demonstrate that the ASME K_{Ic} curve is a conservative representation of the actual material toughness.

3. ASME Operation and Maintenance Code Cases (RG 1.192)

Code Case OMN-1, Revision 2 [2020 Edition]

Type: Reaffirmed.

Title: Alternative Rules for Preservice and Inservice Testing of Active Electric Motor-Operated Valve Assemblies in Light-Water Reactor Power Plants.

The conditions on Code Case OMN-1, Revision 2 [2020 Edition] are identical to the conditions on OMN-1, Revision 2 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-1, Revision 2 was reaffirmed by the ASME in the 2020 Edition with no change to the code case. Therefore, the conditions are retained in Revision 4 of RG 1.192.

Code Case OMN-3 [2020 Edition]

Type: Reaffirmed.

Title: Requirements for Safety Significance Categorization of Components Using Risk Insights for Inservice Testing of LWR Power Plants.

The conditions on Code Case OMN-3 [2020 Edition] are identical to the conditions on OMN-3 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-3 was reaffirmed by the ASME in the 2020 Edition with no change to the code case. Therefore, the conditions are retained in Revision 4 of RG 1.192.

Code Case OMN-4 [2020 Edition]

Type: Reaffirmed.

Title: Requirements for Risk Insights for Inservice Testing of Check Valves at LWR Power Plants.

The conditions on Code Case OMN-4 [2020 Edition] are identical to the

conditions on OMN-4 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-4 was reaffirmed by the ASME in the 2020 Edition with no change to the code case. Therefore, the conditions are retained in Revision 4 of RG 1.192.

Code Case OMN-9 [2020 Edition]

Type: Reaffirmed.

Title: Use of a Pump Curve for Testing.

The conditions on Code Case OMN-9 [2020 Edition] are identical to the conditions on OMN-9 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-9 was reaffirmed by the ASME in the 2020 Edition with no change to the code case. Therefore, the conditions are retained in Revision 4 of RG 1.192.

Code Case OMN-12 [2020 Edition]

Type: Reaffirmed.

Title: Alternative Requirements for Inservice Testing Using Risk Insights for Pneumatically and Hydraulically Operated Valve Assemblies in Light-Water Reactor Power Plants (OM-Code 1998, Subsection ISTC).

The conditions on Code Case OMN-12 [2020 Edition] are identical to the conditions on OMN-12 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-12 was reaffirmed by the ASME in the 2020 Edition with no change to the code case. Therefore, the conditions are retained in Revision 4 of RG 1.192.

Code Case OMN-19 [2020 Edition]

Type: Reaffirmed.

Title: Alternative Upper Limit for the Comprehensive Pump Test.

The conditions on Code Case OMN-19 [2020 Edition] are identical to the conditions on OMN-19 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-19 was reaffirmed by the ASME in the 2020 Edition with no change to the code case. Therefore, the conditions are retained in Revision 4 of RG 1.192.

Code Case OMN-20 [2020 Edition]

Type: Reaffirmed.

Title: Inservice Test Frequency.

The conditions on Code Case OMN-20 [2020 Edition] are identical to the conditions on OMN-20 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-20 was reaffirmed by the ASME in the 2020 Edition with no change to the code case. Therefore, the conditions are retained in Revision 4 of RG 1.192.

C. ASME Code Cases Not Approved for Use (RG 1.193)

The ASME code cases that are currently issued by the ASME, but not approved for generic use by the NRC, are listed in RG 1.193, "ASME Code Cases not Approved for Use." In addition to the ASME code cases that the NRC has found to be technically or programmatically unacceptable, RG 1.193 includes code cases on reactor designs for high-temperature gas-cooled reactors and liquid metal reactors, reactor designs not currently licensed by the NRC, and certain requirements in Section III, Division 2, for submerged spent fuel waste casks, that are not endorsed by the NRC. RG 1.193 complements RGs 1.84, 1.147, and 1.192. It should be noted that the NRC is not adopting any of the code cases listed in RG 1.193.

III. Opportunities for Public Participation

The proposed rule and draft RGs were published in the **Federal Register** on February 2, 2021 (86 FR 7820), for a 60-day comment period. The public comment period closed on April 5, 2021.

IV. Public Comment Analysis

The NRC published the proposed rule and draft regulatory guides for public comment in the **Federal Register**. The NRC received 13 comment submissions. A *comment submission* is a communication or document submitted to the NRC by an individual or entity, with one or more individual comments addressing a subject or issue. Private citizens provided five comment submissions, nuclear industry organizations provided five comment submissions, a foreign government entity provided one comment submission, an anonymous commenter provided one comment submission, and a science advocacy group provided one comment submission.

The comment submissions generally addressed the code cases and their proposed conditions, with five comment submissions objecting to incorporation of a code case with no conditions in this rulemaking activity. The NRC received a number of comments that were outside the scope of this rulemaking, such as comments that discuss code cases annulled after the publication of the supplements being considered in this rulemaking. The latter group of scope comments will be considered in a future rulemaking.

The public comment submittals are available from the Federal e-Rulemaking website at <https://www.regulations.gov>

under Docket ID NRC–2017–0025. The NRC prepared a summary and analysis of public comments received on the 2020 proposed rule and draft regulatory guides, which is available as indicated in the “Availability of Documents” section of this document. Responses to the public comments, including a summary of how the final rule text or guidance changed as a result of the public comments, can be found in the public comment analysis.

For more information about the associated guidance documents, see the “Availability of Guidance” section of this document.

V. Section-by-Section Analysis

The following paragraphs in § 50.55a are revised:

Paragraph (a) Introductory Text

This final rule revises the last sentence to update the contact information for the National Archives and Records Administration.

Paragraph (a)(1) Introductory Text

This final rule corrects a printing error by removing the line break after “telephone:”.

Paragraph (a)(3) Introductory Text

This final rule adds a reference to new paragraph (a)(3)(iv), which indicates that NUREG–2228 is acceptable as specified in the conditions when implementing code cases listed in certain NRC regulatory guides.

Paragraph (a)(3)(i)

This final rule revises the reference to “NRC Regulatory Guide 1.84, Revision 38,” by removing “Revision 38” and adding in its place “Revision 39” and changes the month and year for the document’s revision date.

Paragraph (a)(3)(ii)

This final rule revises the reference to “NRC Regulatory Guide 1.147, Revision 19” by removing “Revision 19” and adding in its place “Revision 20” and changes the month and year for the document’s revision date.

Paragraph (a)(3)(iii)

This final rule revises the reference to “NRC Regulatory Guide 1.192, Revision 3” by removing “Revision 3” and adding in its place “Revision 4” and changes the month and year for the document’s revision date.

Paragraph (a)(3)(iv)

This final rule adds new paragraph (a)(3)(iv) to reference NUREG–2228, “Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed

Validation Procedure,” Published July 2020 (including Errata September 22, 2021), which is referenced in RG 1.147, Revision 20.

Paragraph (b)(1)(ii), Table 1

This final rule revises the reference to table 1 in the text of the paragraph, and designates the table and revises the heading of the table to conform to Office of the Federal Register (OFR) codification requirements.

Paragraph (b)(2)(xv)(K)(4), Table 2

This final rule designates the table and revises the heading of the table to conform to OFR codification requirements.

Paragraph (b)(3)(iv), Table 3

This final rule designates the table and revises the heading of the table to conform to OFR codification requirements, and capitalizes the word “(Years)” in two of the three column headings.

VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

VII. Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC did not receive public comments on the draft regulatory analysis. The final regulatory analysis is available as indicated in the “Availability of Documents” section of this document.

VIII. Backfitting and Issue Finality

The provisions in this final rule allow licensees and applicants to voluntarily apply NRC-approved code cases, sometimes with NRC-specified conditions. The approved code cases are listed in three RGs that are incorporated by reference into § 50.55a. An applicant’s or a licensee’s voluntary application of an approved code case does not constitute backfitting, because there is no imposition of a new requirement or new position.

Similarly, voluntary application of an approved code case by a 10 CFR part 52 applicant or licensee does not represent

NRC imposition of a requirement or action, and therefore is not inconsistent with any issue finality provision in 10 CFR part 52. For these reasons, the NRC finds that this final rule does not involve any provisions requiring the preparation of a backfit analysis or documentation demonstrating that one or more of the issue finality criteria in 10 CFR part 52 are met.

IX. Plain Writing

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

X. Environmental Assessment and Final Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission’s regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant effect on the quality of the human environment from this action. The NRC did not receive public comments regarding any aspect of this environmental assessment.

As voluntary alternatives to the ASME Code, NRC-approved code cases provide an equivalent level of safety. Therefore, the probability or consequences of accidents is not changed. There are also no significant, non-radiological impacts associated with this action because no changes would be made affecting non-radiological plant effluents and because no changes would be made in activities that would adversely affect the environment. The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action.

XI. Paperwork Reduction Act

This final rule amends collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information were approved by the Office of Management and Budget, approval number 3150–0011.

Because the rule will reduce the burden for existing information collections, the public burden for the

information collections is expected to be decreased by 230 hours per response. This reduction includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

The information collection is being conducted to document the plans for and the results of inservice inspection and inservice testing programs. The records are generally historical in nature and provide data on which future activities can be based. Information will be used by the NRC to determine if ASME BPV and OM Code provisions for construction, inservice inspection, repairs, and inservice testing are being properly implemented in accordance with § 50.55a of the NRC regulations, or whether specific enforcement actions are necessary. Responses to this collection of information are mandatory under § 50.55a.

You may submit comments on any aspect of the information collections, including suggestions for reducing the burden, by the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0025.

- *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T-6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0011) Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: oira_submission@omb.eop.gov.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XII. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

XIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal

agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is continuing to use the ASME BPV and OM code cases, which are ASME-approved voluntary alternatives to compliance with various provisions of the ASME BPV and OM Codes. The NRC's approval of the ASME code cases is accomplished by amending the NRC's regulations to incorporate by reference the latest revisions of the following, which are the subject of this rulemaking, into § 50.55a: RG 1.84, Revision 39; RG 1.147, Revision 20; RG 1.192, Revision 4; and NUREG-2228. The RGs list the ASME code cases that the NRC has approved for use. The ASME code cases are national consensus standards as defined in the National Technology Transfer and Advancement Act of 1995 and OMB Circular A-119. The ASME code cases constitute voluntary consensus standards, in which all interested parties (including the NRC and licensees of nuclear power plants) participate.

XIV. Incorporation by Reference-Reasonable Availability to Interested Parties

The NRC is incorporating by reference three NRC RGs that list new and revised ASME code cases that the NRC has approved as voluntary alternatives to certain provisions of NRC-required editions and addenda of the ASME BPV Code and the ASME OM Code. These regulatory guides are RG 1.84, Revision 39; RG 1.147, Revision 20; and RG 1.192, Revision 4. The NRC is also incorporating by reference NUREG-2228, which is referenced in RG 1.147, Revision 20. As described in this document, this report pertains to a condition on Code Case N-847.

The NRC is required by law to obtain approval for incorporation by reference from the OFR. The OFR's requirements for incorporation by reference are set forth in 1 CFR part 51. The discussion in this section complies with the requirement for final rules as set forth in 1 CFR 51.5(b)(2).

The NRC considers "interested parties" to include all potential NRC stakeholders, not only the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogenous group, so the

considerations for determining "reasonable availability" vary by class of interested parties. The NRC identified six classes of interested parties with regard to the material to be incorporated by reference in an NRC rule:

- Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this context, "small entities" has the same meaning as set out in § 2.810.

- Large entities otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this context, a "large entity" is one that does not qualify as a "small entity" under § 2.810.

- Non-governmental organizations with institutional interests in the matters regulated by the NRC.

- Other Federal agencies, states, local governmental bodies (within the meaning of § 2.315(c)).

- Federally-recognized and State-recognized Indian tribes.

- Members of the general public (*i.e.*, individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC's regulatory oversight) who need access to the materials that the NRC proposes to incorporate by reference in order to participate in the rulemaking.

The NUREG-2228 and three RGs that the NRC is incorporating by reference in this final rule are available without cost and can be read online or downloaded online. The NUREG-2228 and three RGs can be viewed, by appointment, at the NRC Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301-415-7000; email: Library.Resource@nrc.gov.

Because access to NUREG-2228 and the three final regulatory guides is available in various forms at no cost, the NRC determines that NUREG-2228 and the three final regulatory guides, RG 1.84, Revision 39; RG 1.147, Revision 20; and RG 1.192, Revision 4, once approved by the OFR for incorporation by reference, are reasonably available to all interested parties.

TABLE III—REGULATORY GUIDES INCORPORATED BY REFERENCE IN 10 CFR 50.55A

Document title	ADAMS Accession No./ Federal Register citation
RG 1.84, Design, Fabrication, and Materials Code Case Acceptability, ASME Section III, Revision 39	ML21181A225
RG 1.147, Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1, Revision 20	ML21181A222
RG 1.192, Operation and Maintenance Code Case Acceptability, ASME OM Code, Revision 4	ML21181A223

TABLE IV—RELATED DOCUMENTS INCORPORATED BY REFERENCE IN 10 CFR 50.55A

Document title	ADAMS Accession No./ Federal Register citation
NUREG-2228, “Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed Validation Procedure,” July 2020	ML20212L592

XV. Availability of Guidance

The NRC is issuing revised guidance, RG 1.193, “ASME Code Cases Not Approved for Use,” Revision 7, for the implementation of the requirements in this final rule. The guidance is available as indicated in Section XVI,

“Availability of Documents,” of this document. You may access information and comment submissions related to the guidance by searching on <https://www.regulations.gov> under Docket ID NRC-2017-0025.

The regulatory guide lists code cases that the NRC has not approved for

generic use and will not be incorporated by reference into the NRC’s regulations.

XVI. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./web link/ Federal Register citation
RG 1.84, Design, Fabrication, and Materials Code Case Acceptability, ASME Section III, Revision 39, December 2021	ML21181A225
RG 1.147, Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1, Revision 20, December 2021	ML21181A222
RG 1.192, Operation and Maintenance Code Case Acceptability, ASME OM Code, Revision 4, December 2021	ML21181A223
RG 1.193, ASME Code Cases Not Approved for Use, Revision 7	ML21181A224
NUREG-2228, “Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed Validation Procedure,” July 2020	ML20212L592
Rulemaking—Proposed Rule—Draft Regulatory Analysis for the American Society of Mechanical Engineers Code Cases, RG 1.84, Rev 39; RG 1.147, Rev 20; RG 1.192 Rev 4	ML20133K152
Rulemaking—Final Rule—Final Regulatory Analysis for the American Society of Mechanical Engineers Code Cases, RG 1.84, Rev 39; RG 1.147, Rev 20; RG 1.192 Rev 4	ML21196A096 ML21196A100
NRC Responses to Public Comments	
Proposed Rule—Approval of American Society of Mechanical Engineers Code Cases RG 1.84, Rev 39; RG 1.147, Rev 20; RG 1.192 Rev 4	ML20132A241
Proposed Rule—Approval of American Society of Mechanical Engineers Code Cases RG 1.84, Rev 39; RG 1.147, Rev 20; RG 1.192 Rev 4	86 FR 7820
Final Rule—Approval of American Society of Mechanical Engineers Code Cases RG 1.84, Rev 38; RG 1.147, Rev 19; RG 1.192 Rev 3	85 FR 14736

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C.

3504 note; Sec. 109, Pub. L. 96-295, 94 Stat. 783.

■ 2. In § 50.55a:

■ a. Revise the last sentence of paragraph (a) introductory text and paragraphs (a)(1) introductory text and (a)(3) introductory text;

■ b. In paragraph (a)(3)(i):

■ i. Remove the text “Revision 38” and add in its place the text “Revision 39”; and

■ ii. Remove the text “dated October 2019” and add in its place the text “issued December 2021”;

■ c. In paragraph (a)(3)(ii):

- i. Remove the text “Revision 19” and add in its place the text “Revision 20”; and
- ii. Remove the text “dated October 2019” and add in its place the text “issued December 2021”;
- d. In paragraph (a)(3)(iii):
- i. Remove the text “Revision 3” and add in its place the text “Revision 4”; and
- ii. Remove the text “dated October 2019” and add in its place the text “issued December 2021”;
- e. Add paragraph (a)(3)(iv);
- f. In paragraph (b)(1)(ii), remove the text “Table I of this section” and add in its place the text “table 1 to this paragraph (b)(1)(ii)”;
- g. Designate the table immediately following paragraph (b)(1)(ii) as table 1 to paragraph (b)(1)(ii) and revise the heading of the newly designated table;
- h. Designate the table immediately following paragraph (b)(2)(xv)(K)(4) as table 2 to paragraph (b)(2)(xv)(K)(4) and revise the heading of the newly designated table; and
- i. Designate the table immediately following paragraph (b)(3)(iv) as table 3 to paragraph (b)(3)(iv) and revise the heading and column headings of the newly designated table.

The revisions and addition read as follows:

§ 50.55a Codes and standards.

(a) * * * For information on the availability of this material at NARA, email fr.inspection@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(1) *American Society of Mechanical Engineers (ASME)*, Three Park Avenue, New York, NY 10016; telephone: 1–800–843–2763; <https://www.asme.org/Codes/>.

(3) *U.S. Nuclear Regulatory Commission (NRC) Public Document Room*, 11555 Rockville Pike, Rockville, Maryland 20852; telephone: 1–800–397–4209; email: pdr.resource@nrc.gov; <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/>. The use of code cases listed in the NRC regulatory guides in paragraphs (a)(3)(i) through (iii) of this section is acceptable with the specified conditions in those guides when implementing the editions and addenda of the ASME BPV Code and ASME OM Code incorporated by reference in paragraph (a)(1) of this section. The NRC report in paragraph

(a)(3)(iv) of this section is acceptable as specified in the conditions when implementing code cases listed in the NRC regulatory guides in paragraphs (a)(3)(i) through (iii) of this section.

(iv) *NUREG–2228. NUREG–2228, “Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed Validation Procedure,”* Published July 2020 (including Errata September 22, 2021), which is referenced in RG 1.147, Revision 20.

(b) * * *

(1) * * *

(ii) * * *

Table 1 to Paragraph (b)(1)(ii)—Prohibited Code Provisions

* * * * *

(2) * * *

(xv) * * *

(K) * * *

(4) * * *

Table 2 to Paragraph (b)(2)(xv)(K)(4)—Table VIII: S7–1—Modified

* * * * *

(3) * * *

(iv) * * *

TABLE 3 TO PARAGRAPH (b)(3)(iv)—MAXIMUM INTERVALS FOR USE WHEN APPLYING INTERVAL EXTENSIONS

Group size	Maximum interval between activities of member valves in the groups (years)	Maximum interval between activities of each valve in the group (years)
* * *	* * *	* * *

* * * * *

Dated: January 25, 2022.
 For the Nuclear Regulatory Commission.
Andrea D. Veil,
Director, Office of Nuclear Reactor Regulation.
 [FR Doc. 2022–04374 Filed 3–2–22; 8:45 am]
BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION
11 CFR Part 111
[Notice 2022–04]
Agency Procedure Concerning the Treatment of Foreign State Respondents at the Initiation of the Enforcement Process

AGENCY: Federal Election Commission.
ACTION: Adoption of Agency procedure.

SUMMARY: The Federal Election Commission is adopting a procedure concerning the enforcement process in situations where the respondent to a

complaint is a foreign state, a political subdivision of a foreign state, a head of state or other foreign official acting in his or her official capacity, or an agency or instrumentality of a foreign state.

DATES: The procedure is adopted as of March 3, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Mark Knop, Assistant General Counsel, 1050 First Street NE, Washington, DC 20463, (202) 694 1650 or (800) 424 9530.

SUPPLEMENTARY INFORMATION: This procedure requires the Commission to adopt a supplemental notification process in matters involving foreign state respondents.

In all enforcement matters in which a foreign state, political subdivision of a foreign state, a head of state or other foreign official acting in his or her official capacity, or any agency or instrumentality of a foreign state is identified as a respondent, the Office of General Counsel (“OGC”), prior to issuing the notification letters required

by 52 U.S.C. 30109(a)(1), will notify the Office of the Legal Adviser at the Department of State (“Department”) of the receipt of the complaint and of the Commission’s statutory notification obligations. This procedure does not alter the Commission’s statutory obligation to issue notification letters to respondents within the period required by 52 U.S.C. 30109(a)(1).

In such matters, OGC will provide a simultaneous report to the Commission concerning the notification to the Department and will promptly inform the Commission of any subsequent communications between OGC and the Department.

Within forty-five days of receiving a complaint naming a foreign state respondent, OGC will make a recommendation to the Commission as to whether consultation with the Department is appropriate to obtain its views concerning any legal or factual question presented by the matter.

This notification represents a general statement announcing the general

course of action that the Commission intends to follow. This rule of agency procedure does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedure Act (“APA”). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: February 18, 2022.

On behalf of the Commission,

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–04358 Filed 3–2–22; 8:45 am]

BILLING CODE 6715–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Bulletin 2022–04: Mitigating Harm From Repossession of Automobiles

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin and policy guidance.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) is issuing this Compliance Bulletin regarding repossession of vehicles, and the potential for violations of sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act’s (Dodd-Frank Act’s) prohibition on engaging in unfair, deceptive, or abusive acts or practices (collectively, UDAAPs) when repossessing vehicles.

DATES: This bulletin is applicable on March 3, 2022.

FOR FURTHER INFORMATION CONTACT: Pax Tirrell, Counsel, Office of Supervision Policy at 202–435–7097; Tara Flynn, Senior Counsel for Enforcement Policy and Strategy, Office of Enforcement at 202–435–9734. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent months, there has been extremely strong demand for used automobiles. Since the start of the COVID–19 pandemic, the average list price for used automobiles has continued to climb. While there are many factors contributing to high prices, the Consumer Financial Protection Bureau is concerned that these market

conditions might create incentives for risky auto repossession practices, since repossessed automobiles can command these higher prices when resold. To mitigate harms from these risks, the Bureau is issuing this bulletin to remind market participants about certain legal obligations under Federal consumer financial laws.

To secure an auto loan, lenders require borrowers to give creditors a security interest in the vehicle. If a borrower defaults, a creditor may exercise its contractual rights to repossess the secured vehicle. Servicers collect and process auto loan or lease payments from borrowers and are either creditors or act on behalf of creditors. Generally, servicers do not immediately repossess a vehicle upon default and instead attempt to contact consumers before repossession, usually by phone or mail. Servicers may give consumers in default the opportunity to avoid repossession by making additional payments or promises to pay. Servicers generally use service providers to conduct repossessions.

While some repossessions are unavoidable, the Bureau pays particular attention to servicers’ repossession of automobiles. Loan holders and servicers are responsible for ensuring that their repossession-related practices, and the practices of their service providers, do not violate the law. The Bureau intends to hold loan holders and servicers accountable for UDAAPs related to the repossession of consumers’ vehicles.¹

II. Unfair and Deceptive Acts or Practices in Supervision and Enforcement Matters

This Bulletin summarizes the current law and highlights relevant examples of conduct observed during supervisory examinations or enforcement investigations that may violate Federal consumer financial law.

Under the Dodd-Frank Act, all covered persons or service providers are prohibited from committing unfair, deceptive, or abusive acts or practices in violation of the Act. An act or practice is unfair when (i) it causes or is likely to cause substantial injury to consumers; (ii) the injury is not reasonably avoidable by consumers; and (iii) the injury is not outweighed by

countervailing benefits to consumers or to competition.²

Whether an act or practice is deceptive is informed by decades of precedent involving Section 5 of the Federal Trade Commission Act.³

The Dodd-Frank Act prohibits two types of abusive practices. First, materially interfering with the ability of a consumer to understand a term or condition of a product or service is abusive. Second, taking unreasonable advantage of statutorily specified market imbalances is abusive. Those market imbalances include (1) a consumer’s lack of understanding of the material risks, costs or conditions of a product or service, (2) a consumer’s inability to protect their interests in selecting or using a product or service, or (3) a consumer’s reasonable reliance on a covered person to act in their interests.⁴

a. Unfair or Deceptive Practices During the Repossession Process

In its Supervisory and Enforcement work, the Bureau has found the following conduct related to repossession of automobiles to be UDAAPs.⁵

Wrongful Repossession of Consumers’ Vehicles

Many auto servicers provide options to borrowers to avoid repossession once a loan is delinquent or in default. Failure to prevent repossession after borrowers complete one of these options, where reasonably practicable given the timing of the borrowers’ action, may constitute an unfair act or practice.

For example, in a public enforcement action, the Bureau found that an entity engaged in an unfair act or practice when it wrongfully repossessed consumers’ vehicles.⁶ The servicer told consumers it would not repossess vehicles when they were less than 60 days past due. Additionally, the servicer maintained a policy and told consumers that it would not repossess vehicles of consumers who had entered into an agreement to extend the loan, or who had made a promise to make a payment on a specific date and that date had not passed or who successfully kept a promise to pay. Nevertheless, the servicer wrongfully repossessed

² Dodd-Frank Act sections 1031, 1036, 12 U.S.C. 5531, 5536.

³ See CFPB Exam Manual at UDAAP 5.

⁴ 12 U.S.C. 5531(d).

⁵ For convenience, this document generally refers to historical findings by “the Bureau” in both Supervision and Enforcement, even though in Supervisory matters the findings are made by the Bureau’s examiners rather than by the Bureau itself.

⁶ *In the Matter of Nissan Motor Acceptance Corp.*, 2020–BCFP–0017 (Oct. 13, 2020).

¹ Although the focus of this bulletin is UDAAPs, the Bureau notes that certain provisions of the Fair Debt Collection Practices Act and its implementing Regulation F may also apply to the repossession of automobiles. Fair Debt Collection Practices Act, 803(6), 15 U.S.C. 1692a(6); 12 CFR 1006.2(i)(1) (effective November 30, 2021).

vehicles from hundreds of consumers who had:

- Made and kept promises to pay that brought the account current;
- Made payments that decreased the delinquency to less than 60 days past due;
- Made promises to pay where the date had not passed; or
- Agreed to extension agreements.

Each of these actions taken by consumers should have prevented repossessions of their vehicles. The Bureau found the servicer's wrongful repossessions constituted an unfair act or practice. They caused substantial injury by depriving borrowers of the use of their vehicles, and many consumers also experienced consequences such as missed work, expenses for alternative transportation, repossession-related fees, detrimental credit reporting, and vehicle damage during the repossession process. Such injury was not reasonably avoidable, and the injury was not outweighed by countervailing benefits to the consumer or to competition.

Supervision has identified similar unfair practices in numerous examinations.⁷ Supervision observed that these violations frequently occurred, after consumers acted to prevent repossession, because of one of the following errors:

- Servicers incorrectly coded consumers as delinquent;
- Servicer representatives failed to cancel repossession orders that had previously been communicated to repossession agents; or
- Repossession agents failed to confirm that the repossession order was still active prior to repossessing a vehicle.

Other Practices Causing Wrongful Repossession

Supervision has also identified other practices related to repossession that resulted in unfair acts or practices. For example, the Bankruptcy Code imposes an automatic stay that bars collection activity, including repossession, from the moment a consumer has filed a bankruptcy petition. Supervision found that when servicers received notice that consumers had filed bankruptcy petitions and their accounts were subject to an automatic stay, the servicers committed an unfair act or practice by repossessing vehicles subject to such automatic bankruptcy stays.

Additionally, Supervision has identified that servicers committed an unfair act or practice by wrongfully repossessing vehicles after

communicating inaccurate information. For example, Supervision has found that some servicers sent consumers letters stating that loans would not be considered past due if the consumer paid the amount due by a specific date. Consumers reasonably expected the servicers not to repossess before the date listed in the letter. When the servicers repossessed the vehicles prior to that date, they committed an unfair act or practice.

Representations of Amounts Owed

Supervision has also identified that servicers committed deceptive acts or practices by failing to provide consumers with accurate information about the amount required to bring their accounts current. For example, when consumers called to determine what amount would bring their accounts current, servicing personnel erroneously represented to consumers an amount due that was less than what was actually owed. As a result of this misrepresentation consumers paid an amount insufficient to avoid delinquency and the consequences of delinquency. This later led to repossessions that would not have occurred had consumers received accurate information. This conduct was deceptive because the servicer told consumers that an amount would bring their accounts current when, in fact, that amount would not bring their account current.

b. Unfair or Deceptive Practices That May Lead to Repossession

The following are examples of practices that lead to repossession of consumers' vehicles that the Bureau has considered to be UDAAPs.

Applying Payments in a Different Order Than Disclosed to Consumers, Resulting in Repossession

Payment application for auto loans is governed by the finance agreements between servicers and consumers. Supervision has found that entities engaged in a deceptive act or practice when they made representations to consumers that payments would be applied in a specific order, and then subsequently applied payments in a different order. For example, Supervision found that servicers represented on their websites that payments would be applied to interest, then principal, then past due payments, before being applied to other charges, such as late fees. Instead, the servicers applied partial payments to late fees first, in contravention of the methodology disclosed on the website. Because servicers applied payments to

late fees first, some consumers were deemed more delinquent than they would have been under the disclosed payment allocation order, and these servicers repossessed some consumers' vehicles.

Under these circumstances, servicers' websites provided inaccurate information about payment allocation order. In some instances, the underlying contract provided the servicer the right to apply payments in any order, which did not immunize the company from liability for the deceptive website content.⁸

Unlawful Fees That Push Consumers Into Default and Repossession

Enforcement has brought claims under the CFPB's unfairness authority where unlawful fees push consumers into default and repossession.

For example, in a public enforcement action, the Bureau found that an entity engaged in an unfair act or practice by operating its force-placed insurance (FPI) program in an unfair manner, in some instances resulting in repossession.⁹ The entity purchased duplicative or unnecessary FPI policies and, in some instances, maintained the policies even after consumers had obtained adequate insurance and provided adequate proof of coverage. This conduct caused the entity to charge consumers for unnecessary FPI, resulting in additional fees, and in some instances delinquency or loan default. For some consumers the additional costs of unnecessary FPI contributed to a default that resulted in the repossession of a consumer's vehicle. Charging unnecessary amounts to consumers and subjecting them to default and repossession caused or was likely to cause substantial injury. This injury was not reasonably avoidable and was not outweighed by countervailing benefits.¹⁰

c. Unfair Practices That May Result in Illegal Fees After Repossession

The following are examples of practices that led to illegal fees after repossession of consumers' vehicles that the Bureau has considered to be UDAAPs.

Charging Illegal Personal Property Fees

The Bureau has identified an unfair practice concerning illegal personal property fees. Borrowers often keep personal property in the repossessed vehicles. These items often are not

⁸ *Supervisory Highlights*, Issue 24—Summer 2021.

⁹ *In re Wells Fargo Bank, N.A.*, 2018-BCFP-0001 (Apr. 20, 2018).

¹⁰ See also *Supervisory Highlights*, Issue 24—Summer 2021.

⁷ *Supervisory Highlights*, Issue 16—Summer 2017; *Supervisory Highlights*, Issue 17—Summer 2018.

merely incidental but can be of substantial practical importance or emotional attachment to borrowers. State law typically requires auto loan servicers and repossession companies to secure and maintain borrowers' property so that it may be returned to the borrower upon request. Some companies charge borrowers for the cost of retaining the property.

In a public enforcement action, the Bureau found that an entity engaged in an unfair act or practice by withholding consumers' personal property unless the consumers paid an upfront fee to recover the property.¹¹ Many of the repossession agents employed by the entity imposed fees on consumers for holding personal property in the repossessed vehicles. The agents often refused to return consumers' personal property unless and until the consumers paid the fees. The Bureau found that the servicer was responsible for its agents withholding consumers' personal property unless the consumer paid an upfront fee to recover it and thus caused substantial injury that was not reasonably avoidable and not outweighed by countervailing benefits to consumers or competition. Supervision has also identified this unfair act or practice at other servicers where the servicers withheld consumers' personal property unless they paid an upfront fee.¹²

Charging for Collateral Protection Insurance After Repossession

Supervision found that servicers engaged in unfair acts or practices by collecting or attempting to collect force-placed collateral protection insurance (FPI) premiums after repossession even though no actual insurance protection was provided for those periods. FPI automatically terminates on the date of repossession, and consumers should not be charged after this date. Despite this, servicers charged consumers for FPI after repossession in four different circumstances. First, servicers failed to communicate the date of repossession to the FPI service provider due to system errors. Second, servicers used an incorrect formula to calculate the FPI charges that needed to be removed due to the repossession. Third, servicers' employees entered the wrong repossession date into their system of record, resulting in improper termination dates. Fourth, servicers charged consumers—who had a vehicle repossessed and subsequently reinstated the loan—post-repossession FPI

premiums, including for the days the vehicle was in the servicer's possession, despite the automatic termination of the policy on the date of repossession. These errors caused consumers substantial injury because they paid amounts they did not owe or were subject to collection attempts for amounts they did not owe. This injury was not reasonably avoidable because consumers did not control the servicers' cancellation processes. The substantial injury to consumers was not outweighed by any countervailing benefits to consumers or competition.¹³

III. The Bureau's Expectations

As explained in greater detail above, the Bureau has held auto lenders, loan holders, and servicers accountable if they or their agents commit UDAAPs when repossessing automobiles, including when they:

- Repossessed vehicles if consumers' loan account is current, even if there was a prior delinquency.
- Repossessed vehicles if consumers entered an agreement to extend the loan.
- Repossessed vehicles if consumers followed any instructions the company said would result in avoiding repossession.
- Repossessed vehicles from consumers who have filed for bankruptcy, and thus are protected by an automatic stay of collection activity.
- Repossessed vehicles as a result of processing payments in a different order than had been communicated to consumers.
- Repossessed vehicles after unlawful fees pushed the consumer's account into default.
- Withhold personal property found in repossessed vehicles until consumers pay an upfront fee to recover the property.

• Charged for collateral protection insurance after a vehicle is repossessed.

To prevent these unfair, deceptive, or abusive acts or practices, entities should consider doing the following:

- Review policies and procedures, including call scripts, to ensure that they provide employees with accurate information about steps consumers can take to prevent repossession.
- Review policies and procedures regarding cancellation of repossession orders to ensure that there is an appropriate process for cancelling repossessions if consumers take steps that should result in cancellation.
- Ensure prompt communications between the servicer and repossession service provider when the servicer

cancels a repossession. For example, servicers may call repossession service providers to confirm cancellation or use mobile phone applications that push cancellation updates to repossession service providers' phones.

- Monitor repossession service providers for compliance with repossession cancellations.
- Incorporate monitoring of wrongful repossession in regular monitoring and audits of communications with consumers.

• Ensure that the entity has a corrective action program to address any violations identified and to reimburse consumers for the direct and indirect costs incurred as a result of unlawful repossessions when appropriate.

- Review payment allocation policies and procedures to validate that they are consistent with the payment allocation order disclosed in contracts and other consumer facing disclosures, such as websites.

• Monitor for illegal fees charged after repossession.

- Review consumer contracts to validate that any fees charged to consumers are authorized under the terms of applicable contracts.

• Review consumer complaints regarding repossession and ensure there is an appropriate channel for receiving, investigating, and properly resolving consumer complaints relating to wrongful repossession and illegal fees after repossession.

- Perform regular reviews of service providers, including repossession vendors, as to their pertinent practices.¹⁴

• Monitor any FPI program to ensure that consumers are not charged for unnecessary FPI. This may include review of FPI cancellation rates.

IV. Conclusion

The Bureau will continue to review closely the practices of entities repossessing automobiles for potential UDAAPs, including the practices described above. The Bureau will use all appropriate tools to hold entities accountable if they engage in UDAAPs in connection with these practices.

V. Regulatory Requirements

The Bulletin constitutes a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). It is intended to provide information regarding the

¹¹ *In the Matter of Nissan Motor Acceptance Corp.*, 2020-BCFP-0017 (Oct. 13, 2020).

¹² *Supervisory Highlights*, Issue 13—Fall 2016.

¹³ *Supervisory Highlights*, Issue 24—Summer 2021.

¹⁴ CFPB Compliance Bulletin and Policy Guidance; 2016-02, Service Providers (Oct. 31, 2016), https://www.consumerfinance.gov/documents/1385/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf.

Bureau's general plans to exercise its supervisory and enforcement discretion for institutions under its jurisdiction and does not impose any legal requirements on external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required in issuing the Bulletin, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis. The Bureau has also determined that the issuance of the Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022-04508 Filed 3-2-22; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2021-1049; Airspace Docket No. 21-ASO-36]

RIN 2120-AA66

Amendment of Class E Airspace; Hampton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface for Atlanta Speedway Airport (formerly Clayton County-Tara Field), Hampton, GA by updating the airport's name and geographical coordinates to coincide with the FAA's database. This action also increases the radius and removes excessive verbiage from the legal description of the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 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. FAA Order JO 7400.11F 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: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; Telephone (404) 305-5966.

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 Class E airspace extending upward from 700 feet above the surface to support IFR operations in Hampton, GA.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR, 69181, December 7, 2021) for Docket No. FAA-2021-1049 to amend Class E airspace extending upward from 700 feet above the surface for Hampton, GA.

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 listed in this document will be published subsequently in FAA Order JO 7400.11.

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 routes, and reporting points.

The Rule

The FAA amends 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface at Atlanta Speedway Airport (formerly Clayton County-Tara Field), Hampton, GA, by updating the airport's name and updating the geographical coordinates to coincide with the FAA's database. In addition, this action amends the radius to 9.2 miles (formerly 6.8 miles) and eliminates excessive verbiage in the legal description.

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.

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. 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 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 JO 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5a. 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 Part 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.

* * * * *

ASO GA E5 Hampton, GA [Amended]

Atlanta Speedway Airport, GA
(Lat. 33°23′24″ N, long. 84°19′52″ W)

That airspace extending upward from 700 feet above the surface within a 9.2-mile radius of Atlanta Speedway Airport.

Issued in College Park, Georgia, on February 23, 2022.

Andrese C. Davis,

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

[FR Doc. 2022–04474 Filed 3–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0816; Airspace Docket No. 21–ANM–27]

RIN 2120–AA66

Modification of Class D and Class E Airspace, and Establishment of Class E Airspace; Southwest Oregon Regional Airport, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D and Class E surface airspace at Southwest Oregon Regional Airport, North Bend, OR. It also modifies the Class E airspace by establishing an area that is designated as an extension to a Class D or Class E surface area, and modifies the Class E airspace extending upward from 700 feet above the surface. Lastly, this action removes navigational aids (NAVAID) from the legal description of the Class E2 and Class E5 text headers, updates the Class D, Class E2, and Class E5 airspace legal descriptions, and establishes Class E4 airspace. This action ensures the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 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. FAA Order JO 7400.11F 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:

Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (86 FR 59672; October 28, 2021) for FAA–2021–0816 to modify the Class D and Class E surface airspace, establish an area that is designated as an extension to a Class D or Class E surface area, modify the Class E airspace extending upward from 700 feet above the surface, remove navigational aids (NAVAID) from the legal description of the Class E2 and Class E5 text headers, update the Class D, Class E2, and Class E5 airspace legal descriptions, and establish Class E4 airspace at Southwest Oregon Regional Airport, North Bend, OR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication of the NPRM in the **Federal Register** (86 FR 59672; October 28, 2021) for FAA–2021–0816, the FAA identified a discrepancy with the assigned Airspace Docket Number. In the NPRM, the Airspace Docket Number is listed as 21–AWP–27, which is incorrect. Oregon is assigned to the FAA’s Northwest Mountain Region. The correct Airspace Docket Number is 21–ANM–27. Additionally, the FAA’s definition of the acronym “NOTAM” changed from “Notice to Airmen” to “Notice to Air Missions” and the legal description in the NPRM is not correct. The phrase “Notice to Air Missions” is now used in the legal descriptions for the Class D and Class E2 surface areas at Southwest Oregon Regional Airport to reflect this change.

Class D, Class E2, Class E4, and Class E5 airspace designations are published in paragraphs 5000, 6002, 6004, 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 D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

The FAA is amending 14 CFR part 71 by modifying the Class D airspace at Southwest Oregon Regional Airport, North Bend, OR. To properly contain departing IFR aircraft flying toward or over rising terrain, the Class D will be extended to the east and southeast of the airport.

This action also modifies the Class E airspace designated as a surface area. The Class E surface area legal description will be coincident with the Class D legal description to properly contain departing IFR aircraft flying toward or over rising terrain.

Next, this action modifies the Class E airspace by establishing an area that is designated as an extension to a Class D or Class E surface area to properly contain IFR arrivals; therefore, an extension east and another southwest of the airport will be established. The extensions are designed to contain arriving IFR aircraft when descending below 1,000 feet above the surface on the ILS or LOC Runway 5 and the VOR-B procedures.

This action also modifies the Class E airspace extending upward from 700 feet above the surface. This airspace is designed to contain departing IFR aircraft until reaching 1,200 feet above the surface and arriving IFR aircraft descending below 1,500 feet above the surface. The Class E radius will be modified, and extensions to the northeast, east, southeast, south, southwest, and west of the airport will be established to contain IFR departures.

Additionally, this action removes the North Bend VORTAC and Emire LOM/

NDB from the Class E2 text header and airspace description. The NAVAIDs are not required to describe the airspace area, and their removal simplifies the airspace's legal description.

This action also removes the North Bend VORTAC from the Class E5 text header and airspace description, and replaces it with the Southwest Oregon Regional Airport's Airport Reference Point coordinates. The NAVAID is not required to describe the airspace area, and its removal simplifies the airspace's legal description.

Lastly, this action makes an administrative update to replace the term "Airport/Facility Directory" in the last line of the Class D and Class E2 airspace descriptions with the term "Chart Supplement."

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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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 5-6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

List of Subjects in 14 CFR Part 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ANM OR D North Bend, OR [Amended]

Southwest Oregon Regional Airport, OR
(Lat. 43°25'01" N, long. 124°14'49" W)

Sunnyhill Airport, OR
(Lat. 43°28'59" N, long. 124°12'10" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of the Southwest Oregon Regional Airport, and within 1.8 miles each side of the 059° bearing from the airport, extending from the 4.2-mile radius to 5.9 miles northeast of the airport, and within 2.9 miles each side of the 159° bearing from the airport, extending from the 4.2-mile radius to 6.4 miles south of the airport, excluding that airspace within a 0.9-mile radius of Sunnyhill Airport below 1,300 feet MSL. This Class D airspace area is effective during the specific dates and times established, in advance, by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ANM OR E2 North Bend, OR [Amended]

Southwest Oregon Regional Airport, OR
(Lat. 43°25'01" N, long. 124°14'49" W)

Sunnyhill Airport, OR
(Lat. 43°28'59" N, long. 124°12'10" W)

That airspace extending upward from the surface within a 4.2-mile radius of the Southwest Oregon Regional Airport, and within 1.8 miles each side of the 059° bearing from the airport, extending from the 4.2-mile radius to 5.9 miles northeast of the airport, and within 2.9 miles each side of the 159° bearing from the airport, extending from the 4.2-mile radius to 6.4 miles south of the airport, excluding that airspace within a 0.9-mile radius of Sunnyhill Airport below 1,300 feet MSL. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air

Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM OR E4 North Bend, OR [New]

Southwest Oregon Regional Airport, OR
(Lat. 43°25'01" N, long. 124°14'49" W)

That airspace upward from the surface within 3.6 miles north and 3.5 miles south of the 092° bearing from the airport, extending from the Southwest Oregon Regional Airport Class D 4.2-mile radius to 11.7 miles east of the airport, and within 2.0 miles southeast and 2.1 miles northwest of the 242° bearing from the airport, extending from the Class D 4.2-mile radius to 9.4 miles southwest of the airport.

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

* * * * *

ANM OR E5 North Bend, OR [Amended]

Southwest Oregon Regional Airport, OR
(Lat. 43°25'01" N, long. 124°14'49" W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the airport, and within 2.0 miles northwest and 2.6 miles southeast of the 058° bearing from the airport, extending from the 9-mile radius to 10.4 miles northeast of the airport, and within 3.8 miles north and 3.7 miles south of the 92° bearing from the airport, extending from the 9-mile radius to 12.7 miles east of the airport, and within 1.9 miles each side of the 149° bearing from the airport, extending from the 9-mile radius to 12.1 miles southeast of the airport, and within 3.0 miles each side of the 199° bearing from the airport, extending from the 9-mile radius to 15 miles south of the airport, and within 8.1 miles southeast and 3.9 miles northwest of the 241° bearing from the airport, extending from the 9-mile radius to 19.2 miles southwest of the airport, and within 3.3 miles each side of the 275° bearing from the airport, extending from the 9-mile radius to 12.1 miles west of the airport.

Issued in Des Moines, Washington, on February 24, 2022.

B.G. Chew,

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

[FR Doc. 2022-04326 Filed 3-2-22; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2020-0504; FRL-9202-02-R5]

Air Plan Approval; Wisconsin; Permit Streamlining Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an approval of revisions to the Wisconsin State Implementation Plan (SIP). These changes include defining and removing terms, creating a more streamlined process for permit applications and reports submitted electronically, and clarifying rules to create a more efficient permit issuance process. Approving this revision also makes Wisconsin rules consistent with Federal rules.

DATES: This final rule is effective on April 4, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2020-0504. All documents in the docket are listed on the 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 either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Susan Kraj, Environmental Engineer, at (312) 353-2654 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Susan Kraj, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)353-2654, kraj.susan@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

I. Background

This final rule addresses the April 6, 2021, SIP revisions submitted by the Wisconsin Department of Natural Resources (WDNR). This submittal includes revisions to the definitions in Chapter NR 400, to the minor construction permit program in Chapter NR 406, and to the operating permit program in Chapter NR 407. Specifically, Wisconsin is requesting to repeal NR 406.03(1e)(a), (b), and (j), NR 406.04(1f)(c) and (Note), NR 407.02(6)(a)3.(Note), NR 407.11(1)(e) and (3)(c), and NR 407.12(1)(b)(Note) and (e); and to amend and create NR 400.02(130), (136m), (136r), and (162), NR 406.02(6), NR 406.03(1e), (1m), and (2)(b), NR 406.04(1)(a)4m., (bm), (i), (m), (zg), (1f), (1k), (1q), (2)(h), (4)(a), (b), (e)3., (h), (j), and (7), NR 406.17(3)(d), NR 407.03(1)(intro.), (a), (bm), (1m), (2)(ba), (f) and (g), NR 407.05(2) and (6), NR 407.105(3)(b), and NR 407.15(5).

On December 6, 2021, EPA published a notice of proposed rulemaking (NPRM) proposing approval of Wisconsin’s April 6, 2021, submittal (86 FR 68954). The specific details of these SIP revisions and the rationale for EPA’s proposed approval are discussed in the NPRM and will not be restated here. The NPRM provided a 30-day public comment period which ended on January 5, 2022.

No comments were received on the proposed rule during the public comment process.

II. What action is EPA taking?

For the reasons set forth in the proposed rulemaking, EPA is approving the requested revisions to Wisconsin’s SIP as submitted on April 6, 2021. These revisions were included in the certified Board Order AM-24-12b and published in the Wisconsin Administrative Register #777 on September 28, 2020.

III. Incorporation by Reference

In this rule, 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 the Wisconsin Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Also in this document, as described in the proposed amendments to 40 CFR

part 52 set forth below, EPA is proposing to remove provisions of the EPA-Approved Wisconsin Regulations from the Wisconsin SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land

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

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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2022. 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, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 22, 2022.

Debra Shore,

Regional Administrator, Region 5.

40 CFR part 52 is amended 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.*

- 2. Section 52.2570 is amended by:
 - a. Revising paragraphs (c)(76)(i)(A) and adding (c)(76)(i)(B);
 - b. Revising (c)(120)(i)(B); and

- c. Adding paragraph (c)(145).

The additions and revisions read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(76) * * *

(i) * * *

(A) NR 407—Wisconsin Administrative Code, Operating Permits, Effective date January 1, 1994. Sections NR 407.11(3)(c) and NR 407.12(1)(b)(Note) were rescinded in 2020 and are removed without replacement; see paragraph (c)(145) of this section.

(B) [Reserved].

* * * * *

(120) * * *

(i) * * *

(B) NR 406.04 Direct sources exempt from construction permit requirements. NR 406.04(1f) and NR 406.04(1k), as published in the Wisconsin Administrative Register, June 30, 2007, No. 618, effective July 1, 2007. Sections NR 406.04(1f)(c) and (Note) were rescinded in 2020 and are removed without replacement; see paragraph (c)(145) of this section.

* * * * *

(145) On April 6, 2021, WDNR submitted a request to revise portions of its Air Pollution Control Definitions, Minor Construction Permit Program, and Operating Permit Program. The changes include defining and removing terms, creating a more streamlined process for permit applications and reports submitted electronically, and clarifying rules to create a more efficient permit issuance process. WDNR submitted revisions to its rules NR 400, NR 406 and NR 407 of the Wisconsin Administrative Code.

(i) *Incorporation by reference.* (A) Wisconsin Administrative Code, NR 400 Air Pollution Control Definitions. NR 400.02(130); NR 400.02(136m), (136r), (162), as published in the Wisconsin Register, September 2020, No. 777, effective October 1, 2020.

(B) Wisconsin Administrative Code, NR 406 Construction Permits. NR 406.02(6); NR 406.03(1e), (1m), and (2)(b); NR 406.04(1)(a)4m., (bm), (i), (m), (zg), (1f), (1k), (1q), (2)(h), (4)(a), (b), (e), (h), (j), and (7); NR 406.17(3)(d), as published in the Wisconsin Register, September 2020, No. 777, effective October 1, 2020.

(C) Wisconsin Administrative Code, NR 407 Operation Permits. NR 407.03(1)(intro.), (a), (bm), (1m), (2)(ba), (f) and (g); NR 407.05(2) and (6); NR 407.105(3)(b); and NR 407.15(5), as published in the Wisconsin Register,

September 2020, No. 777, effective October 1, 2020.

(ii) [Reserved].

[FR Doc. 2022-04071 Filed 3-2-22; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2021-0606; FRL-9176-02-R3]

Air Plan Approval; Virginia; Revision to the Classification and Implementation of the 2015 Ozone National Ambient Air Quality Standard for the Northern Virginia Nonattainment Area

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 Commonwealth of Virginia. This revision consists of an amendment to an existing regulation which adds a new section listing the localities that comprise the Northern Virginia ozone nonattainment area, which is classified as marginal for the 2015 8-hour ozone national ambient air quality standard (NAAQS). EPA is approving this revision to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on April 4, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2021-0606. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215)

814-2053. Ms. Nichols can also be reached via electronic mail at Nichols.Serena@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 2021 (86 FR 71214), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, EPA proposed approval of Virginia's amendment to an existing regulation by adding a new section listing the localities that comprise the Northern Virginia ozone nonattainment area. This revision is needed for the Commonwealth to implement the 2015 8-hour ozone NAAQS in the Northern Virginia ozone nonattainment area. The formal SIP revision was submitted by the Commonwealth of Virginia through the Virginia Department of Environmental Quality (VADEQ) on August 28, 2020.

II. Summary of SIP Revision and EPA Analysis

Virginia's August 28, 2020 SIP revision consists of an amendment to an existing regulation which adds a new section listing the localities that comprise the Northern Virginia ozone nonattainment area, which is classified as marginal for the 2015 ozone NAAQS. The amendments revise the Virginia Administrative Code (VAC), specifically 9VAC5-20-204 (Nonattainment areas) subsection A, which geographically defines the nonattainment areas by locality for the criteria pollutants indicated. The amendments are necessary for implementation of the 2015 ozone NAAQS. The added subdivision, 9VAC5-20-204 A 4, defines the Northern Virginia marginal ozone nonattainment area for the 2015 8-hour ozone standard as including the following areas: Arlington County, Fairfax County, Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City. A reference is also added to 40 CFR 51.1303(a), which pertains to the application of classification and attainment date provisions for areas designated nonattainment for the 2015 8-hour ozone NAAQS.

Other specific requirements of VADEQ's August 28, 2020 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

EPA is approving, as a SIP revision, the Commonwealth of Virginia's August 28, 2020 submittal revising the

subsection listing the localities that comprise the Northern Virginia ozone nonattainment area for the 2015 8-hour ozone NAAQS.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by

Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.11199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211, or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

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

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

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

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

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

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

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2022. 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, amending the section listing the localities that comprise the Northern Virginia ozone nonattainment area, 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 16, 2022.

Diana Esher,

Acting Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e)(1) is amended by adding an entry for “Revision to the Classification and Implementation of the 2015 Ozone National Ambient Air Quality Standard for the Northern Virginia Nonattainment Area” at the end of the table to read as follows:

§ 52.2420 Identification of plan.

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Revision to the Classification and Implementation of the 2015 Ozone National Ambient Air Quality Standard for the Northern Virginia Nonattainment Area.	Northern Virginia Ozone Nonattainment Area.	8/28/20	3/3/22, [insert Federal Register citation].	This revision consists of an amendment to an existing regulation which adds a new section listing the localities that comprise the Northern Virginia ozone nonattainment area.

* * * * *

[FR Doc. 2022-04362 Filed 3-2-22; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R02-OAR-2021-0747; FRL-9241-02-R2]

Outer Continental Shelf Air Regulations Update To Include New Jersey State Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an update of a portion of the Outer Continental Shelf (OCS) Air Regulations proposed in the **Federal Register** on November 23, 2021. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of New Jersey is the COA. The intended effect of approving the OCS requirements for the State of New Jersey is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below will be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: This final rule is effective on April 4, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2021-0747. All documents in the docket are listed on the <http://www.regulations.gov> website.

FOR FURTHER INFORMATION CONTACT: Viorica Petriman, Air Programs Branch, Permitting Section, U.S. Environmental

Protection Agency, Region 2, 290 Broadway, New York, New York 10007, (212) 637-4021, petriman.viorica@epa.gov.

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

Table of Contents

- I. What is the background for this action?
- II. What comments were received in response to the EPA's proposed action?
- III. What action is the EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. What is the background for this action?

On November 23, 2021, EPA proposed to incorporate requirements into the OCS Air Regulations at 40 CFR part 55¹ pertaining to the State of New Jersey. See 86 FR 66505. Section 328(a) of the CAA requires that for such OCS sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the corresponding onshore area (COA). Because the OCS requirements are based on onshore requirements, and onshore requirements may change, CAA section 328(a)(1) requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

To comply with this statutory mandate, the EPA must incorporate by reference into part 55 all relevant state rules in effect for onshore sources, so they can be applied to OCS sources located offshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation

plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rules does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

40 CFR 55.12 specifies certain times at which part 55's incorporation by reference of a state's rules must be updated. One time such a "consistency update" must occur is when any OCS source applicant submits a Notice of Intent (NOI) under 40 CFR 55.4 for a new or a modified OCS source. 40 CFR 55.4(a) requires that any OCS source applicant must submit to EPA a NOI before performing any physical change or change in method of operation that results in an increase in emissions. EPA must conduct any necessary consistency update when it receives a NOI, and prior to receiving any application for a preconstruction permit from the OCS source applicant. 40 CFR 55.6(b)(2) and 55.12(f).

On September 14, 2021, the EPA received a NOI from Ocean Wind, LLC to submit an OCS air permit application for the construction and operation of a new OCS source (a wind energy project) about 15 miles offshore New Jersey.

The EPA reviewed the New Jersey Department of Environmental Protection ("NJDEP") air rules currently in effect, to ensure that they are rationally related to the attainment or maintenance of Federal and State Ambient Air Quality Standards (AAQS) or part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. See 40 CFR 55.1. The EPA has also evaluated the rules to ensure they are not arbitrary and capricious. See 40 CFR 55.12(e). The EPA has excluded New Jersey's administrative or procedural rules,² and

¹ EPA promulgated 40 CFR part 55 on September 4, 1992. The reader may refer to the proposed rulemaking to promulgate part 55 from December 5, 1991 (56 FR 63774) and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

² Each COA, which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as in New Jersey, EPA will use its own administrative and procedural requirements to

requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State AAQS.

II. What comments were received in response to the EPA's proposed action?

The EPA did not receive any comments on the November 23, 2021, proposal to update a portion of the OCS Air Regulations to incorporate requirements into 40 CFR part 55 pertaining to the State of New Jersey.

III. What action is the EPA taking?

The EPA is taking final action to update the "New Jersey" section of Appendix A to 40 CFR part 55 to incorporate by reference relevant New Jersey air pollution control rules that are currently in effect. EPA is approving this action under section 328(a) of the Act, 42 U.S.C. 7627(a). Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the NJDEP air rules that are applicable to OCS sources and currently in effect, and which are described in the amendments to 40 CFR part 55 set forth below. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency

updates, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by the EPA.

a. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Orders (E.O.) 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011) and is therefore not subject to review under the E.O.

b. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, Appendix A. OMB has previously approved the information collection activities contained in the existing regulations at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060-0249. This action does not impose a new information burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, Appendix A.

c. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant impact on a substantial number of small entities under the RFA. This proposed rule does not impose any requirements or create impacts on small entities. This proposed consistency update under CAA section 328 will not create any new requirements but simply proposes to update the State requirements incorporated by reference into 40 CFR part 55 to match the current State requirements.

d. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate or significantly or uniquely affect small governments as described in UMRA, 2 U.S.C. 1531-1538. The action imposes no enforceable duty on any state, local or tribal governments.

e. Executive Order 13132, Federalism

This action does not have federalism implications. It 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.

f. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), 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, nor does it impose substantial direct costs on tribal governments, nor preempt tribal law. It merely updated the State law incorporated by reference into 40 CFR part 55 to match current State requirements.

g. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 and simply proposes to update the State requirements incorporated by reference into 40 CFR part 55 to match the current State requirements.

h. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

i. National Technology Transfer and Advancement Act

This rulemaking 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 Clean Air Act.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it

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.

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2022. 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* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 23, 2022.

Lisa Garcia,
Regional Administrator, Region 2.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 55, is amended as follows.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising the paragraph (e)(15)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.

* * * * *

(e) * * *
(15) * * *
(i) * * *

(A) State of New Jersey Requirements Applicable to OCS Sources, October 6, 2021.

* * * * *

■ 3. Appendix A to 40 CFR part 55 is amended by revising the entry for “New Jersey” to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into 40 CFR Part 55, by State

* * * * *

New Jersey

(a) State requirements.

(1) The following State of New Jersey requirements are applicable to OCS Sources, as of October 6, 2021. New Jersey State Department of Environmental Protection—New Jersey Administrative Code. The following sections of Title 7:

Chapter 27 Subchapter 2—Control and Prohibition of Open Burning (Effective 6/20/1994)

N.J.A.C. 7:27–2.1. Definitions
N.J.A.C. 7:27–2.2. Open burning for salvage operations
N.J.A.C. 7:27–2.3. Open burning of refuse
N.J.A.C. 7:27–2.4. General provisions
N.J.A.C. 7:27–2.6. Prescribed burning
N.J.A.C. 7:27–2.7. Emergencies
N.J.A.C. 7:27–2.8. Dangerous material
N.J.A.C. 7:27–2.12. Special permit
N.J.A.C. 7:27–2.13. Fees

Chapter 27 Subchapter 3—Control and Prohibition of Smoke From Combustion of Fuel (Effective 2/4/2002)

N.J.A.C. 7:27–3.1. Definitions
N.J.A.C. 7:27–3.2. Smoke emissions from stationary indirect heat exchangers
N.J.A.C. 7:27–3.3. Smoke emissions from marine installations
N.J.A.C. 7:27–3.4. Smoke emissions from the combustion of fuel in mobile sources
N.J.A.C. 7:27–3.5. Smoke emissions from stationary internal combustion engines and stationary turbine engines
N.J.A.C. 7:27–3.6. Stack test
N.J.A.C. 7:27–3.7. Exceptions

Chapter 27 Subchapter 4—Control and Prohibition of Particles From Combustion of Fuel (Effective 4/20/2009)

N.J.A.C. 7:27–4.1. Definitions
N.J.A.C. 7:27–4.2. Standards for the emission of particles
N.J.A.C. 7:27–4.3. Performance test principle

N.J.A.C. 7:27–4.4. Emissions tests
N.J.A.C. 7:27–4.6. Exceptions

Chapter 27 Subchapter 5—Prohibition of Air Pollution (Effective 10/12/1977)

N.J.A.C. 7:27–5.1. Definitions
N.J.A.C. 7:27–5.2. General provisions

Chapter 27 Subchapter 6—Control and Prohibition of Particles From Manufacturing Processes (Effective 6/12/1998)

N.J.A.C. 7:27–6.1. Definitions
N.J.A.C. 7:27–6.2. Standards for the emission of particles
N.J.A.C. 7:27–6.3. Performance test principles
N.J.A.C. 7:27–6.4. Emissions tests
N.J.A.C. 7:27–6.5. Variances
N.J.A.C. 7:27–6.7. Exceptions

Chapter 27 Subchapter 7—Sulfur (Effective 11/6/2017)

N.J.A.C. 7:27–7.1. Definitions
N.J.A.C. 7:27–7.2. Control and prohibition of air pollution from sulfur compounds

Chapter 27 Subchapter 8—Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit) (Effective 4/6/2020)

N.J.A.C. 7:27–8.1. Definitions
N.J.A.C. 7:27–8.2. Applicability
N.J.A.C. 7:27–8.3. General provisions
N.J.A.C. 7:27–8.4. How to apply, register, submit a notice, or renew
N.J.A.C. 7:27–8.5. Air quality impact analysis
N.J.A.C. 7:27–8.6. Service fees
N.J.A.C. 7:27–8.7. Operating certificates
N.J.A.C. 7:27–8.8. General permits
N.J.A.C. 7:27–8.9. Environmental improvement pilot tests
N.J.A.C. 7:27–8.11. Standards for issuing a permit
N.J.A.C. 7:27–8.12. State of the art
N.J.A.C. 7:27–8.13. Conditions of approval
N.J.A.C. 7:27–8.14. Denials
N.J.A.C. 7:27–8.15. Reporting requirements
N.J.A.C. 7:27–8.16. Revocation
N.J.A.C. 7:27–8.17. Changes to existing permits and certificates
N.J.A.C. 7:27–8.18. Permit revisions
N.J.A.C. 7:27–8.19. Compliance plan changes
N.J.A.C. 7:27–8.20. Seven-day notice changes
N.J.A.C. 7:27–8.21. Amendments
N.J.A.C. 7:27–8.23. Reconstruction
N.J.A.C. 7:27–8.24. Special provisions for construction but not operation
N.J.A.C. 7:27–8.25. Special provisions for pollution control equipment or pollution prevention process modifications
N.J.A.C. 7:27–8.27. Special facility-wide permit provisions
Appendix 1

Chapter 27 Subchapter 9—Sulfur in Fuels (Effective 9/20/2010)

N.J.A.C. 7:27–9.1. Definitions
N.J.A.C. 7:27–9.2. Sulfur content standards
N.J.A.C. 7:27–9.3. Exemptions
N.J.A.C. 7:27–9.4. Waiver of air quality modeling

Chapter 27 Subchapter 10—Sulfur in Solid Fuels (Effective 9/6/2011)

N.J.A.C. 7:27–10.1. Definitions
N.J.A.C. 7:27–10.2. Sulfur contents standards
N.J.A.C. 7:27–10.3. Expansion, reconstruction, or construction of solid fuel burning units

N.J.A.C. 7:27–10.4. Exemptions
N.J.A.C. 7:27–10.5. SO₂ emission rate determinations

Chapter 27 Subchapter 11—Incinerators (Effective 5/4/1998)

N.J.A.C. 7:27–11.1. Definitions
N.J.A.C. 7:27–11.2. Construction standards
N.J.A.C. 7:27–11.3. Emission standards
N.J.A.C. 7:27–11.4. Permit to construct; certificate to operate
N.J.A.C. 7:27–11.5. Operation
N.J.A.C. 7:27–11.6. Exceptions

Chapter 27 Subchapter 12—Prevention and Control of Air Pollution Emergencies (Effective 5/20/1974)

N.J.A.C. 7:27–12.1. Definitions
N.J.A.C. 7:27–12.2. Emergency criteria
N.J.A.C. 7:27–12.3. Criteria for emergency termination
N.J.A.C. 7:27–12.4. Standby plans
N.J.A.C. 7:27–12.5. Standby orders
Table I Emission Reduction Objectives
Table II Emission Reduction Objectives
Table III Emission Reduction Objectives

Chapter 27 Subchapter 16—Control and Prohibition of Air Pollution by Volatile Organic Compounds (Effective 1/16/2018)

N.J.A.C. 7:27–16.1. Definitions
N.J.A.C. 7:27–16.1A. Purpose, scope, applicability, and severability
N.J.A.C. 7:27–16.2. VOC stationary storage tanks
N.J.A.C. 7:27–16.3. Gasoline transfer operations
N.J.A.C. 7:27–16.4. VOC transfer operations, other than gasoline
N.J.A.C. 7:27–16.5. Marine tank vessel loading and ballasting operations
N.J.A.C. 7:27–16.6. Open top tanks and solvent cleaning operations
N.J.A.C. 7:27–16.7. Surface coating and graphic arts operations
N.J.A.C. 7:27–16.8. Boilers
N.J.A.C. 7:27–16.9. Stationary combustion turbines
N.J.A.C. 7:27–16.10. Stationary reciprocating engines
N.J.A.C. 7:27–16.12. Surface coating operations at mobile equipment repair and refinishing facilities
N.J.A.C. 7:27–16.13. Flares
N.J.A.C. 7:27–16.16. Other source operations
N.J.A.C. 7:27–16.17. Alternative and facility-specific VOC control requirements
N.J.A.C. 7:27–16.18. Leak detection and repair
N.J.A.C. 7:27–16.19. Application of cutback and emulsified asphalts
N.J.A.C. 7:27–16.21. Natural gas pipelines
N.J.A.C. 7:27–16.22. Emission information, record keeping and testing
N.J.A.C. 7:27–16.23. Procedures for demonstrating compliance
N.J.A.C. 7:27–16.27. Exceptions
Appendix I
Appendix II

Chapter 27 Subchapter 18—Control and Prohibition of Air Pollution From New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules) (Effective 11/6/2017)

N.J.A.C. 7:27–18.1. Definitions

N.J.A.C. 7:27–18.2. Facilities subject to this subchapter
N.J.A.C. 7:27–18.3. Standards for issuance of permits
N.J.A.C. 7:27–18.4. Air quality impact analysis
N.J.A.C. 7:27–18.5. Standards for use of emission reductions as emission offsets
N.J.A.C. 7:27–18.6. Emission offset postponement
N.J.A.C. 7:27–18.7. Determination of a net emission increase or a significant net emission increase
N.J.A.C. 7:27–18.8. Banking of emission reductions
N.J.A.C. 7:27–18.9. Secondary emissions
N.J.A.C. 7:27–18.10. Exemptions
N.J.A.C. 7:27–18.12. Civil or criminal penalties for failure to comply

Chapter 27 Subchapter 19—Control and Prohibition of Air Pollution From Oxides of Nitrogen (Effective 1/16/2018)

N.J.A.C. 7:27–19.1. Definitions
N.J.A.C. 7:27–19.2. Purpose, scope and applicability
N.J.A.C. 7:27–19.3. General provisions
N.J.A.C. 7:27–19.4. Boilers serving electric generating units
N.J.A.C. 7:27–19.5. Stationary combustion turbines
N.J.A.C. 7:27–19.6. Emissions averaging
N.J.A.C. 7:27–19.7. Industrial/commercial/institutional boilers and other indirect heat exchangers
N.J.A.C. 7:27–19.8. Stationary reciprocating engines
N.J.A.C. 7:27–19.11. Emergency generators—recordkeeping
N.J.A.C. 7:27–19.13. Alternative and facility-specific NO_x emission limits
N.J.A.C. 7:27–19.14. Procedures for obtaining approvals under this subchapter
N.J.A.C. 7:27–19.15. Procedures and deadlines for demonstrating compliance
N.J.A.C. 7:27–19.16. Adjusting combustion processes
N.J.A.C. 7:27–19.17. Source emissions testing
N.J.A.C. 7:27–19.18. Continuous emissions monitoring
N.J.A.C. 7:27–19.19. Recordkeeping and recording
N.J.A.C. 7:27–19.20. Fuel switching
N.J.A.C. 7:27–19.21. Phased compliance—repowering
N.J.A.C. 7:27–19.23. Phased compliance—use of innovative control technology
N.J.A.C. 7:27–19.25. Exemption for emergency use of fuel oil
N.J.A.C. 7:27–19.26. Penalties

Chapter 27 Subchapter 20—Used Oil Combustion (Effective 9/6/2011)

N.J.A.C. 7:27–20.1. Definitions
N.J.A.C. 7:27–20.2. General provisions
N.J.A.C. 7:27–20.3. Burning of on-specification used oil in space heaters covered by a registration
N.J.A.C. 7:27–20.4. Burning of on-specification used oil in space heaters covered by a permit
N.J.A.C. 7:27–20.5. Demonstration that used oil is on-specification
N.J.A.C. 7:27–20.6. Burning of on-specification oil in other combustion units

N.J.A.C. 7:27–20.7. Burning of off-specification used oil
N.J.A.C. 7:27–20.8. Ash standard
N.J.A.C. 7:27–20.9. Exception

Chapter 27 Subchapter 21—Emission Statements (Effective 1/16/2018)

N.J.A.C. 7:27–21.1. Definitions
N.J.A.C. 7:27–21.2. Applicability
N.J.A.C. 7:27–21.3. General provisions
N.J.A.C. 7:27–21.4. Procedures for submitting an emission statement
N.J.A.C. 7:27–21.5. Required contents of an emission statement
N.J.A.C. 7:27–21.6. Methods to be used for quantifying actual emissions
N.J.A.C. 7:27–21.7. Recordkeeping requirements
N.J.A.C. 7:27–21.8. Certification of information
N.J.A.C. 7:27–21.9. Request for extensions
N.J.A.C. 7:27–21.10. Determination of non-applicability
N.J.A.C. 7:27–21.11. Severability
Appendix 1

Chapter 27 Subchapter 22—Operating Permits (Effective 11/2/2020)

N.J.A.C. 7:27–22.1. Definitions
N.J.A.C. 7:27–22.2. Applicability
N.J.A.C. 7:27–22.3. General provisions
N.J.A.C. 7:27–22.4. General application procedures
N.J.A.C. 7:27–22.5. Application procedures for initial operating permits
N.J.A.C. 7:27–22.6. Operating permit application contents
N.J.A.C. 7:27–22.7. Application shield
N.J.A.C. 7:27–22.8. Air quality simulation modeling and risk assessment
N.J.A.C. 7:27–22.9. Compliance plans
N.J.A.C. 7:27–22.10. Completeness reviews
N.J.A.C. 7:27–22.11. Public comment
N.J.A.C. 7:27–22.12. EPA comment
N.J.A.C. 7:27–22.13. Final action on an application
N.J.A.C. 7:27–22.14. General operating permits
N.J.A.C. 7:27–22.15. Temporary facility operating permits
N.J.A.C. 7:27–22.16. Operating permit contents
N.J.A.C. 7:27–22.17. Permit shield
N.J.A.C. 7:27–22.18. Source emissions testing and monitoring
N.J.A.C. 7:27–22.19. Recordkeeping, reporting and compliance certification
N.J.A.C. 7:27–22.20. Administrative amendments
N.J.A.C. 7:27–22.21. Changes to insignificant source operations
N.J.A.C. 7:27–22.22. Seven-day-notice changes
N.J.A.C. 7:27–22.23. Minor modifications
N.J.A.C. 7:27–22.24. Significant modifications
N.J.A.C. 7:27–22.24A. Reconstruction
N.J.A.C. 7:27–22.25. Department initiated operating permit modifications
N.J.A.C. 7:27–22.26. MACT and GACT standards
N.J.A.C. 7:27–22.27. Operating scenarios
N.J.A.C. 7:27–22.28A. Emissions trading
N.J.A.C. 7:27–22.28B. Facility-specific emissions averaging programs
N.J.A.C. 7:27–22.29. Facilities subject to acid deposition control

N.J.A.C. 7:27–22.30. Renewals
 N.J.A.C. 7:27–22.31. Fees
 N.J.A.C. 7:27–22.32. Hearings and appeals
 N.J.A.C. 7:27–22.33. Preconstruction review
 N.J.A.C. 7:27–22.34. Early reduction of HAP emissions
 N.J.A.C. 7:27–22.35. Advances in the art of air pollution
 Appendix
 Table A

Chapter 27B Subchapter 1—Sampling and Analytical Procedures for Determining Emissions of Particles From Manufacturing Processes and From Combustion of Fuels (Effective 6/21/1976)

N.J.A.C. 7:27B–1.1. Definitions
 N.J.A.C. 7:27B–1.2. Acceptable test methods
 N.J.A.C. 7:27B–1.3. Operating conditions during the test
 N.J.A.C. 7:27B–1.4. Sampling facilities to be provided by the person responsible for emissions
 N.J.A.C. 7:27B–1.5. Sampling train
 N.J.A.C. 7:27B–1.6. Performance test principle
 N.J.A.C. 7:27B–1.7. General testing requirements
 N.J.A.C. 7:27B–1.8. Required test data
 N.J.A.C. 7:27B–1.9. Preparation for sampling
 N.J.A.C. 7:27B–1.10. Sampling
 N.J.A.C. 7:27B–1.11. Sample recovery
 N.J.A.C. 7:27B–1.12. Analysis
 N.J.A.C. 7:27B–1.13. Calculations
 N.J.A.C. 7:27B–1.14. Validation of test

Chapter 27B Subchapter 2—Procedures for Visual Determination of the Opacity (Percent) and Shade or Appearance (Ringelmann Number) of Emissions From Sources (Effective 6/21/1976)

N.J.A.C. 7:27B–2.1. Definitions
 N.J.A.C. 7:27B–2.2. Acceptable observation methods
 N.J.A.C. 7:27B–2.3. Observation principle
 N.J.A.C. 7:27B–2.4. General observation requirements
 N.J.A.C. 7:27B–2.5. Required observation data
 N.J.A.C. 7:27B–2.6. Certification
 References
 Appendix

Chapter 27B Subchapter 3—Air Test Method 3: Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds From Source Operations (Effective 12/1/2008)

N.J.A.C. 7:27B–3.1. Definitions
 N.J.A.C. 7:27B–3.2. Sampling and analytical protocol: Acceptable test methods
 N.J.A.C. 7:27B–3.3. Operating conditions during the test
 N.J.A.C. 7:27B–3.4. Sampling facilities
 N.J.A.C. 7:27B–3.5. Source operations and applicable test methods
 N.J.A.C. 7:27B–3.6. Procedures for the determinations of vapor pressures of a single known VOC or mixtures of known and/or unknown VOC
 N.J.A.C. 7:27B–3.7. Procedures for the direct measurement of volatile organic compounds using a flame ionization detector (FID), a photoionization detector (PID) or a non-dispersive infrared analyzer (NDIR)

N.J.A.C. 7:27B–3.8. Procedures for the direct measurement of volatile organic compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector
 N.J.A.C. 7:27B–3.9. Procedures for the sampling and remote analysis of known volatile organic compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector
 N.J.A.C. 7:27B–3.10. Procedures for the determination of volatile organic compounds in surface coating formulations
 N.J.A.C. 7:27B–3.11. Procedures for the determination of volatile organic compounds emitted from transfer operations using a flame ionization detector (FID) or non-dispersive infrared analyzer (NDIR)
 N.J.A.C. 7:27B–3.12. Procedures for the determination of volatile organic compounds in cutback and emulsified asphalts
 N.J.A.C. 7:27B–3.13. Procedures for the determination of leak tightness of gasoline delivery vessels
 N.J.A.C. 7:27B–3.14. Procedures for the direct detection of fugitive volatile organic compound leaks
 N.J.A.C. 7:27B–3.15. Procedures for the direct detection of fugitive volatile organic compound leaks from gasoline tank trucks and vapor collection systems using a combustible gas detector
 N.J.A.C. 7:27B–3.18. Test methods and sources incorporated by reference.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0292; FRL–9420–01–OCSP]

Polyammonium Bisulfate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of Polyammonium bisulfate (PABS) (CAS Reg. No. 10043–02–4), herein referred to as PABS, when used as an inert ingredient (carrier, adjuvant, buffer and stabilizer) in/on growing crops and raw agricultural commodities pre- and post-harvest, limited to 40% in pesticide non-residential formulations and 5% in pesticide formulations for residential use. An exemption is also established for its use in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing

equipment, food-processing equipment and utensils, limited to 250 parts per million (ppm). Spring Regulatory Sciences on behalf of Earth Science Laboratories, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the establishment of exemptions from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of PABS.

DATES: This regulation is effective March 3, 2022. Objections and requests for hearings must be received on or before May 2, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0292, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Marietta Echevarria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: RDFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at <https://www.ecfr.gov/current/title-40>.

C. How can I file an objection or hearing request?

Under FFDCa section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2021-0292 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 2, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2021-0292, by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more

information about dockets generally, is available at <https://www.epa.gov/dockets>.

II. Petition for Exemption

In the **Federal Register** of June 1, 2021 (86 FR 29229) (FRL-10023-95), EPA issued a document pursuant to FFDCa section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN-11410) by the Spring Regulatory Sciences (6620 Cypresswood Dr., Suite 250 Spring, TX 77379) on behalf of Earth Science Laboratories, Inc., (113 SE 22nd Street, Suite 1, Bentonville, AR 72712). The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of PABS (CAS Reg. No. 10043-02-4) when used as an inert ingredient (carrier, adjuvant, buffer and as a stabilizer) in pesticide formulations applied in/on growing crops pre- and post-harvest, and in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, food-processing equipment and utensils under 40 CFR 180.940(a). That document referenced a summary of the petition prepared by Spring Regulatory Sciences on behalf of Earth Science Laboratories, Inc., the petitioner, which is available in the docket, <https://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has limited the maximum concentration of PABS to not more than 40% in pesticide formulations for non-residential use and not more than 5% in pesticide formulations for residential use under 40 CFR 180.910 and limited the maximum concentration of PABS to 250 ppm under 40 CFR 180.940(a). These limitations are based on the Agency's risk assessment which can be found at <https://www.regulations.gov> in document "Polyammonium Bisulfate; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Amendment to the Tolerance Exemption When Used as an Inert Ingredient in Pesticide Formulations" in docket ID number EPA-HQ-OPP-2021-0292.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty

acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCa allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCa defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCa requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . ." and specifies factors EPA is to consider in establishing an exemption.

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDC section 408(c)(2)(A), and the factors specified in FFDC section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for PABS including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with PABS follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by PABS as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Acute toxicity studies were conducted with ET-3000, a mixture containing PABS. According to these studies acute oral toxicity is low, as the lethal dose (LD₅₀) is 1,750 milligrams/kilogram (mg/kg) in rats, and the acute dermal toxicity in rats is also low, the LD₅₀ is greater than 5,000 mg/kg. PABS is also not toxic via acute inhalation exposure, as the lethal concentration (LC₅₀) is greater than 2.09 mg/L in rats. PABS is, however, corrosive to rabbit skin and the results were equivocal in a dermal sensitization study in mice.

Based on the available data on surrogate chemicals, PABS is expected to cause anemia and diarrhea at doses greater than 1,000 mg/kg/day following subchronic exposure in rats. In a chronic and multigeneration toxicity study in which carcinogenicity was also evaluated, hyperplasia of the glandular stomach and occult blood in the feces were observed at 144 mg/kg/day in rats. No reproduction toxicity or fetal susceptibility was observed in this study. In another chronic/carcinogenicity toxicity study in rats, chronic nephropathy was observed at approximately 564 mg/kg/day. No evidence of carcinogenicity was observed in either study.

No mutagenicity, genotoxicity, or chromosomal aberrations were seen in a battery of mutagenicity tests with the surrogate chemicals except in the case of sodium metabisulfite. Sodium

metabisulfite was negative in the Ames test and a mammalian bone marrow chromosome aberration test. However, positive results were observed in a mammalian cell chromosome aberration assay and sister chromatid exchange assays in human lymphocytes, and a questionably positive result was observed in an *in vivo* mammalian cell chromosome aberration assay. The mutagenicity results are equivocal for sodium metabisulfite.

Neurotoxicity and immunotoxicity toxicity studies are not available for review. However, no evidence of neurotoxicity or immunotoxicity was seen in the available studies.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <https://www.epa.gov/pesticides/factsheets/riskassess.htm>.

No acute endpoint was identified; therefore, an acute assessment is not necessary. The combined chronic toxicity/carcinogenicity study in rats was selected for chronic dietary exposure as well as all other exposure scenarios (incidental oral, dermal and inhalation). In this study, the NOAEL is 72 mg/kg/day, and the LOAEL is 144 mg/kg/day based on hyperplasia of the glandular stomachs and occult blood in the feces. This represents the lowest NOAEL in the database in the most sensitive species. The standard

uncertainty factors (UFs) were applied to account for interspecies (10x) and intraspecies (10x) variations. The default value of 100% was used for the dermal and inhalation absorption factors.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to PABS, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from PABS in food as follows:

In conducting the chronic dietary exposure assessment using the Dietary Exposure Evaluation Model DEEM-FCIDTM, Version 3.16, EPA used food consumption information from the U.S. Department of Agriculture's (USDA's) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, no residue data were submitted for PABS. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled "Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts," (D361707, S. Piper, 2/25/09) and can be found at <https://www.regulations.gov> in docket ID number EPA-HQ-OPP-2008-0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest levels of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations

of active ingredient in agricultural products are generally at least 50 percent of the product and often can be much higher. However, due to dietary risk concerns in assessing this petition request, the Agency assumed that a product consisted of 40 percent PABS instead of 50 percent, as mentioned above. Further, pesticide products rarely have a single inert ingredient; rather, there is generally a combination of different inert ingredients used, which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the Agency considers the active ingredient with the highest tolerance level for that commodity as the guide to assess the total potential level of inert ingredient residues on that commodity. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity.

Finally, a third compounding conservative assumption is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at 40% in the pesticide product at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data. EPA did assume that PABS will be limited to 40% in pesticide non-residential formulations that will be applied to crops and raw

agricultural commodities pre- and post-harvest.

To assess dietary exposure to PABS due to its use in antimicrobial products, the EPA calculated the daily dietary dose (DDD) and the estimated daily intake (EDI) as described in the Food and Drug Administration (FDA) model. The assessment considered: Application rates (limited to 250 ppm), residual solution or quantity of solution remaining on the treated surface without rinsing with potable water, surface area of the treated surface which comes into contact with food, pesticide migration fraction, and body weight. These assumptions are based on FDA Food Contact Surface Sanitizing Solution Dietary Exposure Assessment Model (2003).

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for PABS, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). PABS may be used as an inert ingredient in pesticide products that are registered for specific uses that may result in residential exposure, specifically in antimicrobial formulations applied to food-contact surfaces and utensils. Adult residential exposure combines high end dermal and inhalation handler exposure from liquids/trigger sprayer/home garden with a high-end post application dermal exposure from contact with treated lawns. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). A conservative residential exposure and risk assessments was completed for pesticide products containing PABS as an inert ingredient. Due to risks of concern resulting from aggregate exposure to PABS, the petitioner requested a limitation of 5% in products for residential use. Therefore, the Agency conducted an assessment to represent conservative residential exposure by assessing PABS (outdoor scenarios) and in disinfectant-type uses (indoor scenarios) at no more than 5%

in the final formulation. The Agency assessed pesticide products containing PABS using exposure scenarios used by OPP's Antimicrobials Division to represent conservative residential handler exposure. Further details of this residential exposure and risk analysis can be found at <https://www.regulations.gov> in the memorandum entitled: "JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations," (D364751, 5/7/09, Lloyd/LaMay in docket ID number EPA-HQ-OPP-2008-0710).

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to PABS and any other substances. PABS does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that PABS does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at <https://www.epa.gov/pesticides/cumulative>.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable

data available to EPA support the choice of a different factor.

The Agency has concluded that there is reliable data to determine that infants and children will be safe if the FQPA SF of 10X is reduced to 1X for the chronic dietary assessment for the following reasons. The toxicity database for surrogate chemicals to PABS contains a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test, multi-generation reproduction toxicity and mutagenicity studies. There is no indication of immunotoxicity or neurotoxicity in the available studies on surrogate chemicals; therefore, there is no need to require an immunotoxicity or neurotoxicity study. Fetal susceptibility is not observed in the available studies. In the multi-generation reproduction toxicity study in rats, maternal and offspring toxicity, which manifested as hyperplasia of the fore and glandular stomachs, and occult blood in the feces were observed at the same dose, 144 mg/kg/day. The cRfD of 0.72 mg/kg/day is based on the effects seen in this study. No reproduction toxicity is seen in the available studies. Based on the adequacy of the toxicity database, the conservative nature of the exposure assessment and the lack of concern for prenatal and postnatal susceptibility, the Agency has concluded that there is reliable data to determine that infants and children will be safe if the FQPA SF of 10X is reduced to 1X.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, PABS is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to PABS from food and water will utilize 83% of the

cPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

PABS is currently used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure from food and water with short-term residential exposures to PABS.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 273 for adults. For children, the aggregate MOE is 115. Because EPA's level of concern for PABS is an MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

PABS is currently used as an inert ingredient in pesticide products that are registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to PABS.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 430 for adults. For children the aggregate MOE is 117. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). Because EPA's level of concern for PABS is an MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, PABS is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children

from aggregate exposure to PABS residues.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of PABS in or on any food commodities. EPA is establishing a limitation on the amount of PABS that may be used in pesticide formulations. This limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use where PABS exceeds 40% in the final pesticide formulations for non-residential use or 5% in the final pesticide formulations for indoor and outdoor residential use. EPA will also not register any pesticide formulations for antimicrobials where PABS exceeds 250 ppm.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for PABS (CAS Reg. No. 10043-02-4) when used as an inert ingredient (carrier, adjuvant, buffer, stabilizer) in pesticide formulations applied in/on growing crops pre- and post-harvest, limited to 40% in non-residential formulations and 5% in formulations for residential indoor and outdoor use; and under 40 CFR 180.940(a) in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, food-processing equipment and utensils, limited to 250 ppm end-use concentration in formulations.

VII. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885,

April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDC section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDC section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the

various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, amend table 1 to 180.910 by adding in alphabetical order the inert ingredient “Polyammonium Bisulfate (CAS Reg. No. 10043–02–4)” to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.910

Inert ingredients		Limits		Uses
*	*	*	*	*
Polyammonium Bisulfate (CAS Reg. No. 10043–02–4).		Not to exceed 40% in non-residential formulations. Not to exceed 5% in outdoor and indoor formulations for residential use.		Carrier, adjuvant, buffer, and stabilizer.
*	*	*	*	*

■ 3. In § 180.940, amend table 1 to paragraph (a) by adding in alphabetical order an entry for “Polyammonium Bisulfate” to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

(a) * * *

* * * * *

TABLE 1 TO PARAGRAPH (a)

Pesticide chemical	CAS Reg. No.	Limits
*	*	*
Polyammonium Bisulfate	10043–02–4	When ready for use, the end-use concentration is not to exceed 250 ppm.
*	*	*

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****44 CFR Part 1**

[Docket ID FEMA-2017-0016]

RIN 1660-AA91

Regulations on Rulemaking Procedures

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

ACTION: Final rule.

SUMMARY: This final rule revises Federal Emergency Management Agency (FEMA) regulations pertaining to rulemaking. It removes sections that are outdated or do not affect the public and it updates provisions that affect the public's participation in the rulemaking process.

DATES: This final rule is effective April 4, 2022.

FOR FURTHER INFORMATION CONTACT:

Kristen Shedd, Associate Chief Counsel, Regulatory Affairs, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, 202-646-4381, or (email) kristen.shedd@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: FEMA published a notice of proposed rulemaking (NPRM) on June 7, 2017, at 82 FR 26411, proposing revisions to its regulations on rulemaking procedures. The NPRM proposed to remove outdated provisions, update provisions that affect the public, and modify FEMA's waiver of the Administrative Procedure Act exemption for matters relating to public property, loans, grants, benefits, and contracts. FEMA received five public comments in response to the proposed rule. Two commenters, the law offices of Texas RioGrande Legal Aid, Inc. (Texas RioGrande) and the National Rural Electric Cooperative Association (NRECA), expressed concern that the proposed regulations would result in a reduction in transparency and stakeholder involvement in FEMA's rulemaking process. One comment, submitted by former research consultants to the Administrative Conference of the United States (ACUS), recommended further revisions to the petitions for rulemaking section. Two comments were unrelated to the subject matter of the rulemaking and are not the subject of further discussion below.

FEMA now finalizes the proposed regulations with some revisions made in

response to the relevant comments received. FEMA describes these revisions and addresses the specific concerns of each commenter below.

Administrative Procedure Act Exemption for Public Property, Loans, Grants, Benefits, or Contracts

The Administrative Procedure Act exempts from notice and comment rulemaking matters relating to public property, loans, grants, benefits, or contracts.¹ FEMA's regulations currently waive this exemption in keeping with a 1969 ACUS Recommendation which recommended that Congress remove this exemption from the Administrative Procedure Act and that, even in the absence of legislative action, agencies should subject these matters to notice and comment rulemaking in the interest of transparency and public participation.² In the NPRM, FEMA noted that one of its main functions is to administer grant programs for emergency preparedness, response, recovery, and mitigation. FEMA proposed to modify its waiver of the exemption for three separate and independent reasons: (1) It is not feasible to go through the rulemaking process for annual grant programs, which comprise the majority of FEMA grant programs; (2) the Administrative Procedure Act does not require grant program requirements (for annual grant programs or otherwise) to be in regulation; and because (3) FEMA requires flexibility to adapt quickly to legal and policy mandates. 82 FR 26413.

Texas RioGrande submitted a comment expressing concern over this proposed modification of the waiver of the Administrative Procedure Act exemption. Texas RioGrande stated that it had consistently expressed concern about lack of transparency in FEMA's administration of its Individuals and Households Program (IHP), and that it filed lawsuits on behalf of clients in south Texas who were impacted by the use of FEMA's "unpublished rules" following Hurricane Dolly in 2008 and other disasters in 2015 and 2016. The commenter noted that it had also discussed these concerns in its comments submitted on FEMA's Individuals and Households Program Unified Guidance (IHPUG).³ The

¹ 5 U.S.C. 553(a)(2).

² ACUS Recommendation 69-8, adopted October 21-22, 1969, available at <https://www.acus.gov/sites/default/files/documents/69-8.pdf>. FEMA established a regulation waiving the exemption even though the ACUS recommendation did not specifically recommend such a course of action.

³ Texas RioGrande's comment on the IHPUG can be viewed at www.regulations.gov under Docket ID FEMA-2016-0011, document number FEMA-2016-0011-0085.

IHPUG⁴ compiled FEMA policy for each type of assistance under IHP into one comprehensive document and was intended to serve as a singular policy resource for State, local, Tribal, and territorial governments, and other entities who assist disaster survivors with post-disaster recovery. The IHPUG replaced all stand-alone IHP policies and policy statements that were previously located in FEMA documents and standard operating procedures.⁵

The commenter stated that "FEMA's current published materials do not provide anyone outside FEMA a fair idea of how FEMA decides who gets what disaster assistance." The commenter stated that FEMA's current regulations and guidance are "not a recipe for fair and efficient administration of any government program" and that "[w]hether in regulations or informal guidance, FEMA should provide a full and fair picture of how it makes its disaster assistance decisions, and whether it changes its standards from disaster to disaster" The commenter stated that "FEMA already keeps hundreds of its IHP standards from being accessible to the public." The commenter expressed concern that the proposed rule would "inhibit the transparency that policy makers and the public need."

Finally, the commenter suggested that the public interest in participation outweighs FEMA's need for flexibility to sometimes forego notice and comment rulemaking. The commenter opined that current 44 CFR 1.4(f) and (h)⁶ include a sufficient mechanism for FEMA to bypass notice and comment in order to address emergency situations.

As an initial matter, FEMA notes that the specific contents of the IHP regulations and guidance are outside the scope of this rulemaking. As the commenter recognized, FEMA already has IHP regulations at 44 CFR 206.110-206.117, and has already published the IHPUG for notice and comment and

⁴ Note the IHPUG has been superseded by the Individual Assistance Program and Policy Guide (IAPPG) for any disaster declared after March 1, 2019. See http://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

⁵ The IHPUG can be viewed on FEMA's website at http://www.fema.gov/sites/default/files/2020-05/IHP_Unified_Guidance_FINAL_09272016_0.pdf.

⁶ Section 1.4(f) generally tracks the "good cause" exemptions to notice and comment rulemaking requirements under the Administrative Procedure Act. Section 1.4(h) relates to emergency situations and generally tracks section 6(a)(3)(D) of Executive Order 12866.

made the final IHPUG available on FEMA's website.⁷ This rule, as proposed and as finalized, would not directly affect the transparency of FEMA's current IHP regulations or guidance. While the rule makes clear that FEMA can change the current rules without notice and comment, FEMA has no plans to remove the IHP regulations or to reduce the transparency of such regulations and guidance.⁸

FEMA agrees with the commenter that it is important to provide fair notice of FEMA policies, but FEMA disagrees that this rule will inhibit such notice. This rule, as proposed and as finalized, has no bearing on the availability of FEMA's policies and procedures to the public. For instance, the Administrative Procedure Act and the Freedom of Information Act each contain provisions directed at the transparency of government programs. See 5 U.S.C. 552; 6 CFR part 5; see also 42 U.S.C. 5165c(c) (FEMA "shall promote public access to policies governing the implementation of the public assistance program," *i.e.*, disaster assistance to State, local, and Tribal governments and certain private non-profit organizations). And consistent with 2 CFR part 200, FEMA posts notices of funding opportunities on *www.grants.gov*. See 2 CFR 200.203. *Grants.gov* provides a common website for Federal agencies to post discretionary funding opportunities and for grantees to find and apply for them. It helps the grant community learn more about available opportunities, facilitates interaction with the Federal government, and simplifies the grant application process. This rule does not affect the applicability of any of these transparency measures. FEMA will continue to provide fair notice of its policies consistent with all applicable legal requirements.

Finally, with respect to public participation, FEMA agrees with the commenter that FEMA should maintain its general policy in favor of public participation. Consistent with the proposed rule, FEMA has retained the general policy in favor of public

participation in this final rule. FEMA disagrees, however, that existing regulations provide sufficient flexibility, as the agency's past experience demonstrates the challenges in issuing or revising regulations in sufficient time to support some grant programs. FEMA acknowledges that even in the absence of the Administrative Procedure Act's notice and comment exemption for rules relating to grants, FEMA may be able to avail itself of other exceptions to notice and comment (such as the "good cause" exception at 5 U.S.C. 553(b)(B)) when action is urgently required. FEMA prefers to avoid relying solely on such exceptions, however, because the Administrative Procedure Act makes the grants exemption available to FEMA and because some exceptions from notice and comment requirements are narrowly construed by courts. For instance, the "good cause" exception at 5 U.S.C. 553(b)(B) might not in all cases accommodate circumstances where FEMA perceives a need to bypass notice and comment in situations of an ongoing emergency such as a global pandemic, where a court applying the "good cause" standard rigorously might question whether FEMA should have acted to address a specific problem sooner. There may also be circumstances where, by virtue of multiple concurrent disasters or emergencies, there are limited regulatory development personnel to expedite multiple rulemaking projects through the notice and comment process.

With respect to the commenter's statement that FEMA's existing regulation at 44 CFR 1.4(h) provides an exception to notice and comment requirements, that exception is limited to an emergency situation; is more narrowly focused on requirements associated with Executive Order 12866; and calls for the preparation of additional materials for which FEMA may at times be inadequately resourced. FEMA does not believe this emergency situation exception is sufficient to ensure the flexibility needed to effectively implement its grants programs.

FEMA believes the revisions made in this rule will signal the appropriate policy intention to generally favor public participation, while providing the degree of flexibility that the Administrative Procedure Act provides and that FEMA believes appropriate.

FEMA notes that the general policy is not the only applicable law or regulation relating to public participation in rulemaking. For instance, 42 U.S.C. 5165c requires notice and comment before adopting

any new or modified policy that governs implementation of the Public Assistance program and could result in a significant reduction of assistance under the program. This statutory requirement ensures that one of FEMA's largest grant programs, the Public Assistance program, includes opportunities for public participation before any new or modified policy that could result in a significant reduction of assistance is implemented. FEMA will of course continue to abide by any legal or regulatory requirement relating to notice and comment rulemaking.

FEMA is therefore finalizing this aspect of the proposed rule without change. As noted above and in the proposed rule, however, FEMA does not anticipate a significant change in practice as a result of these amendments.

Petitions for Rulemaking

In the NPRM, FEMA proposed to revise its regulations regarding petitions for rulemaking to update and clarify terminology and to require that petitions be labeled "petition for rulemaking" or "rulemaking petition" to avoid situations where simple correspondence is confused with a petition.

FEMA received a comment from two former co-consultants to ACUS who assisted with the ACUS 2014 petitions for rulemaking project. This project resulted in ACUS Recommendation 2014-6, "Petitions for Rulemaking." See 79 FR 75114, 75117 (Dec. 17, 2014). The commenters approved of the revisions FEMA proposed in the NPRM but requested that FEMA make additional changes to its petitions for rulemaking regulations in accordance with Recommendation 2014-6.

The commenters proposed that FEMA should accept electronic submissions of petitions for rulemaking. FEMA's current regulations as well as the proposed regulations only provide for a physical mailing address. The commenters quoted from ACUS Recommendation 2014-6, which recommends that agencies accept the electronic submission of petitions, via email or through *regulations.gov* (such as by maintaining an open docket for the submission of petitions for rulemaking) or their existing online docketing system.⁹ The commenters stated that at a minimum, FEMA should provide an appropriate and permanent email address for submitting petitions.

FEMA agrees that in most contexts online communication is more efficient than physical mail but declines to adopt a binding regulation authorizing the

⁷ The Individual Assistance Program and Policy Guide (IAPPG) that superseded the IHPUG is also available on FEMA's website. See Individual Assistance Program and Policy Guide (IAPPG), Version 1.1, May 2021 at http://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf. (last accessed on Nov. 4, 2021)

⁸ As FEMA noted in the proposed rule, the proposed change with respect to the grants exemption was partly intended to allow FEMA to operate certain annual grants programs without rulemaking. An annual grant program is a program for which Congress on an annual basis (1) appropriates a certain amount of money for the program, and (2) potentially revises requirements associated with the program. IHP is not such a program.

⁹ Recommendation 2014-6, #4.

electronic submission of petitions at this time. FEMA believes allowing electronic submission of petitions could lead to confusion or inappropriate mass submissions without the proper infrastructure and procedures. At this time, FEMA cannot reliably support efficient online petitioning and therefore has not revised its regulations to permanently authorize the electronic submission of petitions. FEMA is open to experimenting with electronic submissions in the future, however, and has revised the regulatory text to make clear that FEMA will post to its website (www.fema.gov/about/offices/chief-counsel/rulemaking) additional acceptable methods for submitting petitions. If FEMA decides to maintain a public docket system for petitions, it will revise the above web page to reference that docket system.

The commenters also recommended that FEMA develop a default timeline for responding to petitions or publish online individual timelines for responding to each received petition, consistent with Recommendation 2014–6, #12 and #13, and with the requirements of the Administrative Procedure Act to respond to petitions “within a reasonable time.”¹⁰ FEMA does not agree to develop a default timeline for responding to petitions. The Administrative Procedure Act requires FEMA to respond “within a reasonable time” and what is considered to be a reasonable time will vary depending on the degree of complexity of individual petitions and surrounding circumstances. The ACUS recommendations cited do not recommend that agencies issue binding regulations for these timeframes, but rather that an agency should “adopt in its procedures” a default timeline for responding or otherwise make publicly available the timeframe by which it will respond to an individual petition.¹¹ Given limited agency resources, specific timelines published in regulation could bind FEMA in a way the underlying report nor the ACUS recommendation require, creating an undue burden on the agency.

The commenters recommended that FEMA create a way for petitioners and the public to learn the status of their pending petitions, consistent with ACUS Recommendation 2014–6, #7. That recommendation suggests either using online dockets or designating a single point of contact authorized to provide information about the status of

petitions. The commenters further stated that FEMA should provide a permanent email address and telephone number at which interested members of the public can inquire about the status of petitions.

FEMA is interested in promoting more seamless interactions with the public in general, including this particular issue.¹² FEMA intends to experiment with an online docketing system, and does not believe it is appropriate to require such a system by regulation at this time. If FEMA establishes such a system, FEMA will include a link to the system at the web page identified above. Similarly, although FEMA declines to include in regulation the name and/or phone number of a point of contact for all rulemaking petitions, FEMA is including an email address (fema-regulations@fema.dhs.gov) as a point of contact to confirm whether FEMA has received or responded to a specific rulemaking petition. FEMA may publish additional information on its website at a future date.

The commenters stated that FEMA may also consider making additional changes as recommended by ACUS, including detailing how FEMA will coordinate consideration of petitions with other processes used to determine agency priorities, such as the Unified Agenda and retrospective review of existing rules.¹³ As stated in § 1.8(b) of this final rule, if the FEMA Administrator finds that a petition contains adequate justification, a rulemaking proceeding will be initiated or a final rule will be issued as appropriate. Prioritization would be commensurate with the agency’s regulatory priorities, as determined by the Administrator. FEMA does not believe that it is appropriate to include this internal process in regulation as such internal processes are exempt from the requirements of 5 U.S.C. 553 and should be subject to change at the Administrator’s discretion.

The commenters also suggest further explaining what type of data and arguments are most useful for petitioners to provide to aid agency evaluation.¹⁴ The current and proposed regulations request the petitioner to provide the substance of the rule or amendment proposed, or specify the rule sought to be repealed or amended, and set forth all data and arguments available to the petitioner in support of

the action sought. FEMA believes that this level of detail is sufficient. FEMA does not want to be overly prescriptive, considering the wide variety of changes that may be requested by a petitioner, and the wide variety of potential petitioners. The current regulations allow flexibility to the petitioner by providing general guidelines rather than dictating particular data points. If FEMA finds that a particular petition requires clarification or additional support before a determination can be made, it is its current practice to indicate such to the petitioner. This is consistent with ACUS Recommendation 2014–6, #6.

The commenters recommend inviting public comment on petitions as appropriate, consistent with ACUS Recommendation 2014–6, #8 and #9. FEMA has revised § 1.8 to make clear that it will consider on a case-by-case basis whether to solicit public comment on a petition. FEMA has further revised this section to clarify that the agency can take action to accept comments, by removing text stating that “No public procedures will be held directly on the petition before its disposition.” In making the decision whether to solicit public comment on a petition, the agency will consider a variety of factors, including the nature and complexity of the petition, to determine if public comment is appropriate in advance of a decision on the petition. FEMA does not find it necessary to add a provision to the regulations regarding a specific public comment process for petitions given this change.

Finally, the commenters recommend posting additional information on FEMA’s website about how to submit petitions, consistent with ACUS Recommendation 2014–6, #16. As noted, FEMA has included a provision directing readers to the FEMA website. FEMA may, in its discretion, include additional information there.

Early and Meaningful Opportunity To Participate in the Development of Rules

In the NPRM, FEMA proposed to remove § 1.4(d), which describes FEMA’s general policy of giving the public, including small entities and consumer groups, an early and meaningful opportunity to participate in the development of rules such as through advance notices of proposed rulemaking, holding open conferences, and convening public forums or panels. The NRECA submitted a comment expressing disagreement with FEMA’s proposal to remove this text. The NRECA stated that the current language creates the appropriate impression for the public and interested stakeholders looking to become involved in the

¹² This interest is consistent with Executive Order 14058 “Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government,” 86 FR 71357 (Dec. 16, 2021).

¹³ ACUS Recommendation 2014–6, #2.

¹⁴ ACUS Recommendation 2014–6, #3.

¹⁰ 5 U.S.C. 555(b).

¹¹ See Admin. Conf. of the U.S., Recommendation 2014–7, *Petitions for Rulemaking*, 79 FR 75114 (Dec. 17, 2014).

process that FEMA is open to such participation.

Although FEMA is removing this section from its regulations, FEMA continues to support early and meaningful opportunity for the public to participate in the development of rules. As a matter of internal policy, FEMA sends copies of regulatory actions during the public comment period to publications likely to be read by those affected and solicits comment from interested parties by such means as direct mail. FEMA does not plan to change this policy. FEMA also has a general internal policy of publishing requests for information and advance notices of proposed rulemaking as appropriate to the rulemaking project, specifically to give the public an early and meaningful opportunity to participate in the development of a rule. FEMA generally favors this approach for rules likely to be deemed significant under Executive Order 12866. FEMA followed this policy by publishing two requests for information related to the National Flood Insurance Program¹⁵ in advance of considering rulemaking and two advance notices of proposed rulemaking (one in 2016, one in 2017) for the public assistance program, in order to receive public input before FEMA fully developed the proposed rule.¹⁶ See 82 FR 4064 (Jan. 12, 2017); 81 FR 3082 (Jan. 20, 2016). The removal of the text streamlines the regulations and ensures the agency retains the flexibility to utilize a range of public engagement options in advance of rulemaking where appropriate.

Inclusion of the 60-Day Public Comment Period in the Regulations

In the NPRM, FEMA proposed to remove § 1.4(e), which states FEMA's general policy of affording the public a 60-day comment period for notices of proposed rulemaking, unless the Administrator makes an exception and sets forth the reasons for the exception in the preamble to the notice of proposed rulemaking. The NRECA submitted a comment disagreeing with this proposed removal, stating that for the novice member of the public or interested stakeholder trying to become meaningfully involved in a process that will have impact on livelihoods and economic success or failure, there is no harm in including the length of the comment period in the regulations.

As stated in the NPRM, the 60-day comment period is recommended by Executive Order 12866. 60 days is also

the time frame that FEMA generally follows. While the comment period is specifically stated in each proposed rule when published in the **Federal Register** and the public would generally be reviewing the proposed rule that may impact them instead of FEMA's overall regulatory scheme, FEMA is retaining the 60-day comment period requirement in this final rule. FEMA still believes there are specific situations in which a shorter or longer comment period is appropriate. Such situations may include emergency situations where public comment is important, but the agency must still act in an expeditious manner for shorter comment periods. Longer comment periods may be appropriate for more technically complex, lengthy proposed rules. Longer comment periods may also be appropriate where the rulemaking may impact areas recently struck by a disaster to allow potentially impacted individuals more time to fully review the rulemaking. FEMA will continue to provide an explanation for departing from a 60-day comment period under the final rule, but consistent with other changes in this rule, will reserve discretion to depart from this standard as FEMA determines appropriate, in its discretion.

Bypassing Notice and Comment for Good Cause or for Statements of Policy, Interpretive Rules, and Rules of Organization and Procedure

In the NPRM, FEMA proposed to remove § 1.4(f), which echoes the provisions of the Administrative Procedure Act to exempt from notice and comment rulemaking statements of policy, interpretive rules, and rules of organization and procedure, or to bypass notice and comment for good cause. The NRECA disagreed with the proposed removal for the reasons it disagreed with the proposed removals of § 1.4(d) and (e). As stated in the NPRM and as noted in response to Texas RioGrande's comment above, these exemptions are included in the Administrative Procedure Act and FEMA does not need to restate them in its regulations in order to follow them. As these are statutory exemptions, FEMA has the authority to exempt these items from rulemaking without regulations. As such, there is no need to repeat the exemptions in FEMA's regulations.

Periodic Review of Regulations

In the NPRM, FEMA proposed to remove § 1.8 which describes FEMA's intent to publish in the **Federal Register**, and keep updated, a plan for periodic review of existing rules at least

within 10 years from the date of publication of a final rule. The NRECA disagreed with this proposal and recommended that FEMA update section 1.8 to indicate that FEMA will continue to participate in reviews of existing rules.

FEMA proposed to remove this section from part 1 because the process for review of existing rules has changed over time and may continue to change. FEMA has actively participated in retrospective reviews of existing regulations and will continue to do so. As the requirements are continually evolving, FEMA finds that including them in its rulemaking regulations would not be appropriate, as it would continually need to update the regulations as the requirements evolve and new executive orders are issued. This does not mean that the public will not be informed or involved, however. For example, in August 2011 DHS finalized a retrospective review plan that established a retrospective review process for seeking input from the public on a three-year cycle. Pursuant to that plan, DHS published **Federal Register** documents on February 26, 2014¹⁷ and October 11, 2016¹⁸ seeking public comment on existing regulations that DHS should consider as candidates for streamlining or repeal. Moreover, on June 15, 2017, FEMA published a **Federal Register** document requesting public input on its regulatory reform efforts.¹⁹ The agency also recently issued a request for information seeking input on FEMA's programs, regulations, collections of information, and policies and where the public believes the agency should consider modifying, streamlining, expanding, or repealing.²⁰

In addition to FEMA's commitment to retrospective review of existing regulations, FEMA is obligated by law to perform periodic review of rules that have or will have a significant economic impact upon a substantial number of small entities. See 5 U.S.C. 610. Because this requirement is included in the Regulatory Flexibility Act, FEMA is statutorily bound to follow the requirement, regardless of whether the requirement is stated in the regulation. Eliminating this provision does not eliminate FEMA's requirement to follow the statutory requirement and reduces

¹⁷ 79 FR 10760. Comments received can be viewed on www.regulations.gov under docket ID DHS-2014-0006.

¹⁸ 81 FR 70060. Comments received can be viewed on www.regulations.gov under docket ID DHS-2016-0072.

¹⁹ 82 FR 27460. Comments received can be viewed on www.regulations.gov under docket ID FEMA-2017-0023.

²⁰ See 86 FR 21325 (Apr. 22, 2021).

¹⁵ See 86 FR 47128 (Aug. 23, 2021) and 86 FR 56713 (Oct. 12, 2021).

¹⁶ See 85 FR 80719 (Dec. 14, 2020).

the potential confusion any statutory change to this requirement may cause until the regulation can be updated.

Review of the Regulatory Flexibility Analysis by the Small Business Administration

In the NPRM, FEMA proposed to remove § 1.13(c), which states that copies of regulatory flexibility analyses shall be furnished to the Chief Counsel for Advocacy of the Small Business Administration. The Regulatory Flexibility Act (RFA) requires agencies to transmit a copy of the initial regulatory flexibility analysis, or if the agency is certifying the rule, a copy of the factual basis for certification, to the Chief Counsel for Advocacy of the Small Business Administration.²¹ It is not necessary to include this statutory requirement in regulation. The NRECA disagreed with this removal, and recommended that FEMA retain the provision, because it informs members of the public who are trying to follow the rulemaking process and may not be aware of the ability of the Small Business Administration’s Office of Advocacy to become involved. FEMA declines to incorporate the RFA’s statutory requirements into regulation. As explained above, FEMA is streamlining these regulations and eliminating references to specific statutory requirements as FEMA is already required to follow those provisions. Members of the public seeking more information on the RFA process can review the statutory requirements as the Act is cited in each rulemaking where it is applicable.

FEMA also notes that the RFA requires the agency to respond to any comments received from the Small Business Administration.²² The agency must provide the response to these comments in the final Regulatory Flexibility Analysis, which must be posted for public viewing, and a summary published in the **Federal Register**.²³ FEMA posts the final Regulatory Flexibility Analysis under the docket for the rule on www.regulations.gov, and a summary is also included in the preamble to the final rule. Therefore, the public has full visibility of any Small Business Administration involvement. FEMA concludes that it is not necessary to include this requirement in its regulations.

²¹ 5 U.S.C. 603(a), 605(b).

²² 5 U.S.C. 604(a)(3).

²³ 5 U.S.C. 604(b).

Adoption of a Final Rule: Support for Factual Conclusions and Adequately Addressing Public Comments

In the NPRM, FEMA proposed to remove § 1.16(d)(2), which requires FEMA to make a determination that the factual conclusions upon which a final rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular. The NRECA disagreed with this proposed removal and recommended that this requirement be maintained as a testament to FEMA’s attention to the record and stakeholder input in particular.

FEMA notes that the Administrative Procedure Act requires that a final rule take into consideration the relevant matter presented during the public comment period and requires the agency to provide a statement of the basis and purposes of the final rule.²⁴ This is a legal requirement that the agency must meet regardless of whether the requirement appears in the agency’s own regulations on rulemaking. There is robust jurisprudence that has arisen out of this particular requirement of the Administrative Procedure Act, which has resulted in very detailed and thorough statements of bases and purpose in agency rulemakings.²⁵ FEMA concludes that this requirement is not necessary to be in regulation, as the agency is bound by law to meet it and the agency’s internal controls ensure the requirement is met.

Availability of Internal Rulemaking Procedures to the Public

The NRECA objected generally to the proposed removal of regulations that reflect FEMA’s internal policies because “those internal processes are not available to the public and therefore reduce transparency.” The NRECA also stated its concern that reliance on internal processes means that a rulemaking process “will have a head start, gather a head of steam prior to stakeholders including the public being able to provide input, and therefore not truly open to public participation.”

²⁴ 5 U.S.C. 553(c).

²⁵ The statement of basis and purpose, commonly referred to as the “preamble,” has become one of the primary documents that judges turn to in deciding the validity of challenged rules. See *A Guide to Federal Agency Rulemaking*, 6th ed., Jeffrey S. Lubbers, Part III, Chap. 8, B. See, e.g., *Motor Vehicle Manufacturers Ass’n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983); *Independent U.S. Tanker Owners Committee v. Dole*, 809 F.2d 847 (D.C. Cir. 1987); *Action on Smoking & Health v. CAB*, 699 F.2d 1209 (D.C. Cir. 1983).

As noted earlier, FEMA does not expect that this rule will have any material impact on its public outreach as part of the rulemaking process. As a matter of policy, FEMA engages in a number of processes to ensure appropriate early and meaningful public participation. FEMA also publishes its planned regulatory actions semi-annually in the Unified Agenda. With respect to transparency and public access to non-regulatory policies, FEMA notes that www.fema.gov makes many FEMA policies available to the public, and that FEMA makes other internal documents available to the public as dictated by the Freedom of Information Act and other laws on public access to agency information. See generally, e.g., 6 CFR part 5.

Change Chart

The following chart lists the current section and its disposition via the final rule:

Current section	Final rule
1.1 Purpose	
1.1(a)	1.1(a).
1.1(b)	Removed.
1.1(c)	Removed.
1.1(d)	Removed.
1.1(e)	Removed.
1.2 Definitions	
1.2(a)	1.2(a).
1.2(b)	1.2(b).
1.2(c)	1.2(c).
1.2(d)	1.2(d).
1.2(e)	Removed.
1.3 Scope	
1.3(a)	1.1(a).
1.3(b)	Removed.
1.3(c)	1.1(b).
1.4 Policy and Procedures	Removed, except 1.4(b) and 1.4(e) moved to 1.3.
1.5 Rules docket	
1.5(a)	1.4(a) & 1.5.
1.5(b)	1.4(b).
1.6 Ex parte communications	
1.6 Introductory language.	Removed.
1.6(a)	1.6(a).
1.5(b)	1.6(b).
1.7 Regulations agendas.	Removed.
1.8 Regulations review	Removed.
1.9 Regulatory impact analyses.	Removed.
1.10 Initiation of rule-making	
1.10	1.8/partially removed.
1.11 Advance notice of proposed rulemaking.	Removed.
1.12 Notice of proposed rulemaking.	Removed.
1.13 Participation by interested persons.	Removed.
1.14 Additional rule-making proceedings.	1.7(c)/partially removed.
1.15 Hearings	
1.15(a)	1.7(a)/partially removed.
1.15(b)	1.7(b).
1.16 Adoption of a final rule.	Removed.
1.17 Petitions for reconsideration.	1.9.

Current section	Final rule
1.18 <i>Petitions for rule-making.</i>	1.8.

IV. Regulatory Analyses

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has designated this rule a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by OMB.

This final rule revises FEMA regulations pertaining to rulemaking by removing sections that are outdated or do not affect the public and update provisions that affect the public’s participation in the rulemaking process. FEMA does not believe this rule imposes additional direct costs on the public or government.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended, 5 U.S.C. 601–612, agencies must consider the impact of their rulemakings on “small entities” (small businesses, small organizations and local governments). When the Administrative Procedure Act requires an agency to publish a notice of proposed rulemaking under 5 U.S.C. 553, the RFA requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could “have a significant economic impact on a substantial number of small entities.” The RFA also provides that in lieu of a regulatory flexibility analysis,

the agency may certify in the rulemaking document that the rulemaking will not “have a significant economic impact on a substantial number of small entities” along with a statement providing the factual basis for such certification. FEMA has voluntarily published a notice of proposed rulemaking in this case, notwithstanding that this rule is a rule of agency organization, procedure, or practice exempt from notice and comment rulemaking requirements. See 5 U.S.C. 553(b)(A).

This rule revises FEMA regulations pertaining to rulemaking by removing sections that are outdated or do not affect the public and update provisions that affect the public’s participation in the rulemaking process. This rule does not impose direct costs on small entities. Accordingly, and although FEMA is not required to make such certification, pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), the Administrator of FEMA certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, pertains to any notice of proposed rulemaking which implements any rule that includes a Federal mandate 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 in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, nor by the private sector, of \$100,000,000 or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3520, an agency may not conduct

or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from OMB for the collection and the collection displays a valid OMB control number. See 44 U.S.C. 3506, 3507. FEMA has determined that this rulemaking does not contain any collections of information as defined by that Act. PRA regulations exempt general solicitations of comments from the public such as rulemakings. See 5 CFR 1320.3(h)(4).

Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A “record” is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A “system of records” is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

This final rule does not create a new, nor impact a current, system of record. Therefore, this proposed rule does not require coverage under an existing or new Privacy Impact Assessment or System of Records Notice. Any member of the public or any non-Federal entity may submit comments on a rulemaking; all comments are posted on www.regulations.gov, and that website, as well as each FEMA rulemaking document requesting comments, includes a Privacy Notice informing the

commenter that any comments will be posted for public viewing.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

This rule does not have Tribal implications. Any member of the public and any non-Federal entity, including Tribes and Tribal members, may participate in Federal rulemaking as outlined in this proposed rule, and it is FEMA’s policy that ex parte restrictions in rulemaking do not apply to Tribal consultations.

Executive Order 13132, Federalism

Executive Order 13132, “Federalism,” 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that 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.” Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has reviewed this rule under Executive Order 13132 and has determined that this rule does 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, and therefore does not have federalism implications as defined by the Executive order. It addresses agency procedures for rulemaking that affect the public; such rulemaking is a Federal process and does not affect State rulemaking processes.

Congressional Review of Agency Rulemaking

Under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency’s actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders. 5 U.S.C. 801(a)(1).

FEMA has sent this rule to the Congress and to GAO pursuant to the CRA. OMB’s Office of Information and Regulatory Affairs has determined that this rule is not a “major rule” within the meaning of the CRA. 5 U.S.C. 804(2). It will not have an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have 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.

List of Subjects in 44 CFR Part 1

Administrative practice and procedure.

■ For the reasons discussed in the preamble, the Federal Emergency Management Agency revises 44 CFR part 1 to read as follows:

PART 1—RULEMAKING, POLICY, AND PROCEDURES

Sec.

- 1.1 Purpose and scope.
- 1.2 Definitions.
- 1.3 Regulatory policy.
- 1.4 Public rulemaking docket.
- 1.5 Public comments.
- 1.6 Ex parte communications.
- 1.7 Hearings.

- 1.8 Petitions for rulemaking.
- 1.9 Petitions for reconsideration.

Authority: 5 U.S.C. 551, 553; 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1.

§ 1.1 Purpose and scope.

(a) This part contains FEMA’s procedures for informal rulemaking under the Administrative Procedure Act (5 U.S.C. 553) that affect the public.

(b) This part does not apply to rules issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 1.2 Definitions.

(a) *Rule* or *regulation* have the same meaning as those terms are defined in the Administrative Procedure Act (5 U.S.C. 551(4)).

(b) *Rulemaking* means the FEMA process for considering and formulating the issuance, amendment, or repeal of a rule.

(c) *Administrator* means the Administrator, FEMA, or an official to whom the Administrator has expressly delegated authority to issue rules.

(d) *FEMA* means Federal Emergency Management Agency.

§ 1.3 Regulatory policy.

(a) It is the general policy of FEMA to provide for public participation in rulemaking regarding its programs and functions, including matters that relate to public property, loans, grants, or benefits, or contracts, even though these matters are not subject to a requirement for notice and public comment rulemaking by law.

(b) It is the general policy of FEMA that its notices of proposed rulemaking are to afford the public at least 60 days for submission of comments unless the Administrator makes an exception and sets forth the reasons for the exception in the preamble to the notice of proposed rulemaking.

(c) The general policies contained in this section are not intended to and do not create a right or benefit, substantive or procedural, enforceable against the United States or its agencies or officers. FEMA may depart from such policies in its absolute discretion, including for its annual grant programs and in other cases as circumstances warrant.

§ 1.4 Public rulemaking docket.

(a) FEMA maintains a public docket for each rulemaking after it is published in the **Federal Register** and until the rulemaking is closed and archived at the National Archives and Records Administration. The public docket includes every document published in the **Federal Register** in conjunction

with a rulemaking. It also includes regulatory assessments and analyses, written comments from the public addressed to the merits of a proposed rule, comments from the public received in response to notices, or to withdrawals or terminations of a proposed rulemaking, requests for a public meeting, requests for extension of time, petitions for rulemaking, grants or denials of petitions or requests, and transcripts or minutes of informal hearings. The public rulemaking docket is maintained by the Regulatory Affairs Division, Office of Chief Counsel.

(b) After FEMA establishes a public rulemaking docket, any person may examine docketed material during established business hours by prearrangement with the Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C St. SW, Washington, DC 20472, and may obtain a copy of any docketed material (except for copyrighted material). FEMA also maintains a copy of each public docket electronically, with the exception of copyrighted material, on www.regulations.gov. To access the docket on www.regulations.gov, search for the docket ID associated with the rulemaking.

(c) The docket for flood hazard elevation rules issued by the National Flood Insurance Program are partially maintained at the locality that is the subject of the rule. FEMA includes in the preamble of each flood hazard elevation rule the repository address for supporting material.

§ 1.5 Public comments.

A member of the public may submit comments via mail or courier to the Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 500 C St. SW, Washington, DC 20472, or may submit comments electronically to the rulemaking docket at www.regulations.gov under the applicable docket ID.

§ 1.6 Ex parte communications.

(a) All oral or written communications from outside the Federal Executive branch of significant information and argument respecting the merits of a rulemaking document, received after publication of a notice of proposed rulemaking, by FEMA or its offices and divisions or their personnel participating in the decision, must be summarized in writing and placed promptly in the public docket. This applies until the agency publishes a final regulatory action such as a withdrawal of the notice of proposed rulemaking or a final rule.

(b) FEMA may conclude that restrictions on ex parte communications are necessitated at other times by considerations of fairness or for other reasons.

(c) This section does not apply to Tribal consultations.

§ 1.7 Hearings.

(a) When FEMA affords an opportunity for oral presentation, the hearing is an informal, non-adversarial, fact-finding proceeding. Any rulemaking issued in a proceeding under this part in which a hearing is held need not be based exclusively on the record of such hearing.

(b) When such a hearing is provided, the Administrator will designate a representative to conduct the hearing.

(c) The transcript or minutes of the hearing will be kept and filed in the public rulemaking docket.

§ 1.8 Petitions for rulemaking.

(a) Any interested person may petition the Administrator for the issuance, amendment, or repeal of a rule. For purposes of this section, the term *person* includes any member of the public and any entity outside the Federal Executive branch of Government. Each petitioner must:

(1) Submit the petition to the Regulatory Affairs Division, Office of Chief Counsel, FEMA, 8NE, 500 C Street SW, Washington, DC 20472;

(2) Label the petition with the following: “Petition for Rulemaking” or “Rulemaking Petition”;

(3) Set forth the substance of the rule or amendment proposed or specify the rule sought to be repealed or amended;

(4) Explain the interest of the petitioner in support of the action sought; and

(5) Set forth all data and arguments available to the petitioner in support of the action sought.

(b) FEMA will specify additional methods of submitting rulemaking petitions on its website at www.fema.gov/about/offices/chief-counsel/rulemaking and petitioners seeking to confirm whether FEMA has received or responded to a specific rulemaking petition may inquire at fema-regulations@fema.dhs.gov. The website may also contain other information about the petition for rulemaking process.

(c)(1) FEMA may solicit public comment on the petition in its discretion. If the Administrator finds that the petition contains adequate justification, a rulemaking proceeding will be initiated, or a final rule will be issued as appropriate. If the Administrator finds that the petition

does not contain adequate justification, the petition will be denied by letter or other notice, with a brief statement of the ground for denial. The disposition will be posted on www.regulations.gov under docket ID FEMA–2022–0011.

(2) The Administrator may consider new evidence at any time; however, FEMA will not consider repetitious petitions for rulemaking.

§ 1.9 Petitions for reconsideration.

Petitions for reconsideration of a final rule will not be considered. Such petitions, if filed, will be treated as petitions for rulemaking in accordance with § 1.8.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–04309 Filed 3–2–22; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 220225–0059]

RIN 0648–BJ09

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Correction

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

ACTION: Correcting amendment.

SUMMARY: This document makes technical corrections to a final rule that modified the Atlantic Large Whale Take Reduction Plan. The correction reinstates paragraphs that were inadvertently removed from the Code of Federal Regulations when the final rule published on September 17, 2021.

DATES: Effective March 3, 2022.

FOR FURTHER INFORMATION CONTACT: Colleen Coogan, Marine Mammal/Sea Turtle Branch Chief, phone: (978) 281–9181 or email: Colleen.Coogan@noaa.gov.

SUPPLEMENTARY INFORMATION:

Need for Correction

NMFS published a final rule to implement modifications to the Atlantic Large Whale Take Reduction Plan (ALWTRP or Plan) on September 17, 2021 (86 FR 51970), to meet the goals of the Marine Mammal Protection Act

(MMPA) and Endangered Species Act (ESA). The final rule became effective on October 18, 2021. While the modifications were intended to revise the then existing § 229.32(a) through (c), the final rule inadvertently replaced the entirety of § 229.32 resulting in the accidental removal of paragraphs (d), (e), (f), (g), (h), and (i) from the Code of Federal Regulations. These sections apply to gillnet fisheries and Southeastern U.S. fisheries, and NMFS is correcting the error through this correcting amendment.

For further information on the September 17, 2021, Plan modifications, see the final rule (86 FR 51970, September 17, 2021). For further information on the Plan, visit the website <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-plan>.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such requirement is unnecessary and contrary to the public interest. The regulations in § 229.32(d) through (i) were never intended to be removed or modified in any way through the 2021 final rule, and there was no discussion or analysis of any such action in the preambles to the proposed rule or final rule. Any delay in reinstating § 229.32(d) through (i) would result in wide scale confusion among the fishing industry and law enforcement, as well as potential harm to North Atlantic right whales, humpback whales, and fin whales. Therefore, in order to avoid the negative consequences that are expected to result from unnecessary delay in making this correction, the AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment. For the same reasons, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this correcting amendment.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Endangered Species, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: February 25, 2022.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

Accordingly, 50 CFR part 229 is corrected by making the following correcting amendment:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*; § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 2. In § 229.32, add paragraphs (d) through (i) to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(d) *Restrictions applicable to anchored gillnet gear*—(1) *Universal anchored gillnet gear requirements.* In addition to the area-specific measures listed in paragraphs (d)(3) through (8) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed in paragraphs (d)(1)(i) through (iii) of this section.

(i) *No buoy line floating at the surface.* No person or vessel may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, sinking and/or neutrally buoyant line must be used between these objects.

(ii) *No wet storage of gear.* Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(iii) *Groundlines.* All groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(2) *Area specific gear restrictions.* No person or vessel may fish with or possess anchored gillnet gear in Areas referenced in paragraphs (d)(3) through (8) of this section, unless that gear complies with the gear requirements specified in paragraph (d)(1) of this section, and the area specific requirements listed in paragraphs (d)(2)(i) through (iii) of this section, or unless the gear is stowed as specified in § 229.2.

(i) *Buoy line weak links.* All buoys, floatation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, floatation device and/or weight as operationally feasible and that meets the following specifications:

(A) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(B) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(C) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this paragraph (d)(2)(i).

(ii) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations unless exempted from this requirement under paragraph (a)(5) of this section:

(A) *Configuration 1.* (1) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request; and

(2) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(3) One weak link must be placed as close as possible to each end of the net panels on the floatline; and

(4) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(5) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every

25 fathoms (150 ft or 45.7 m) along the floatline.

(B) *Configuration 2.* (1) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request; and

(2) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(3) One weak link must be placed between the floatline tie loops between net panels; and

(4) One weak link must be placed where the floatline tie loops attaches to the bridle, buoy line, or groundline at the end of a net string; and

(5) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(6) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(iii) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor unless exempted from this requirement under paragraph (a)(5) of this section. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Greater Atlantic Region.

(3) *Cape Cod Bay Restricted Area—(i) Area.* The Cape Cod Bay restricted area is bounded by the following points and on the south and east by the interior shoreline of Cape Cod, Massachusetts.

TABLE 17 TO PARAGRAPH (d)(3)(i)

Point	N lat.	W long.
CCB1	41°46.8'	70°30'
CCB2	42°12'	70°30'
CCB3	42°12'	70°15'
CCB4	42°04.8'	70°10'

(ii) *Closure.* During January 1 through May 15 of each year, no person or vessel may fish with or possess anchored

gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements.* From May 16 through December 31 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(4) *Great South Channel Restricted Gillnet Area—(i) Area.* The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points:

TABLE 18 TO PARAGRAPH (d)(4)(i)

Point	N lat.	W long.
GSC1	41°02.2'	69°02'
GSC2	41°43.5'	69°36.3'
GSC3	42°10'	68°31'
GSC4	41°38'	68°13'

(ii) *Closure.* From April 1 through June 30 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements.* From July 1 through March 31 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph

(d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(5) *Great South Channel Sliver Restricted Area—(i) Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points:

TABLE 19 TO PARAGRAPH (d)(5)(i)

Point	N lat.	W long.
GSCRA1	41°02.2'	69°02'
GSCRA2	41°43.5'	69°36.3'
GSCRA3	41°40'	69°45'
GSCRA4	41°00'	69°05'

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(6) *Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as the Cape Cod Bay Restricted Area in paragraph (d)(3) of this section that lie south of 43°15' N lat. and west of 70°00' W long.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(7) *Other Northeast Gillnet Waters Area—(i) Area.* The Other Northeast Gillnet Waters Area consists of all state and Federal U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W long. south to 36°33.03' N lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area,

Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N lat., 71°51.5' W long. (Watch Hill Point, RI) south to 40°00' N lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2' N lat., 71°51.5' W long. (Watch Hill Point, RI) south to 40°00' N lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(8) *Mid/South Atlantic Gillnet Waters—(i) Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY, at 72°30' W long. south to 36°33.03' N lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N lat., and east to the eastern edge of the EEZ. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess anchored gillnet gear in the Mid/South Atlantic Gillnet Waters unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the

following area specific requirements, or unless the gear is stowed as specified in § 229.2. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(2) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this paragraph (d)(8)(ii)(A).

(B) *Net panel weak links.* The weak link requirements apply to all variations in panel size. All net panels must contain weak links that meet the following specifications unless exempted under paragraph (a)(5) of this section:

(1) The breaking strength for each of the weak links must not exceed 1,100 lb (499.0 kg).

(2) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline then individual weak links are not required. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(3) Weak links must be placed in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m) in length, or at least

every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(C) *Additional anchoring system and net panel weak link requirements.* All gillnets must return to port with the vessel unless the gear meets the following specifications:

(1) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor unless exempted under paragraph (a)(5) of this section. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(2) *Net panel weak links.* Net panel weak links must meet the specifications in this paragraph. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations found in paragraph (d)(2)(ii)(A) or (B) of this section.

(3) *Additional provision for North Carolina.* All gillnets set 300 yards (274.3 m) or less from the shoreline in North Carolina must meet the anchoring system and net panel weak link requirements in paragraphs (d)(8)(ii)(C)(1) and (2) of this section, or the following:

(i) The entire net string must be less than 300 yards (274.3 m) from shore.

(ii) The breaking strength of each weak link must not exceed 600 lb (272.2 kg). The weak link requirements apply to all variations in panel size.

(iii) All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(2)(ii)(A) or (B) of this section.

(iv) Regardless of the number of net panels, all anchored gillnets must be secured at the offshore end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having a holding capacity equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor, and at the inshore end of the net string with a dead weight equal to or greater than 31 lb (14.1 kg).

(e) *Restrictions applicable to drift gillnet gear—(1) Cape Cod Bay Restricted Area—(i) Area.* The Cape Cod Bay Restricted Area is bounded by the following points and on the south and

east by the interior shoreline of Cape Cod, Massachusetts.

TABLE 20 TO PARAGRAPH (e)(1)(i)

Point	N lat.	W long.
CCB1	41°46.8'	70°30'
CCB2	42°12'	70°30'
CCB3	42°12'	70°15'
CCB4	42°04.8'	70°10'

(ii) *Closure.* From January 1 through April 30 of each year, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (e)(1)(i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements.* From May 1 through December 31 of each year, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Cape Cod Bay Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Cape Cod Bay Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(2) *Great South Channel Restricted Gillnet Area—(i) Area.* The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points:

TABLE 21 TO PARAGRAPH (e)(2)(i)

Point	N lat.	W long.
GSC1	41°02.2'	69°02'
GSC2	41°43.5'	69°36.3'
GSC3	42°10'	68°31'
GSC4	41°38'	68°13'

(ii) *Closure.* From April 1 through June 30 of each year, no person or vessel may set, fish with or possess drift gillnet

gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements.* From July 1 through March 31 of each year, no person or vessel may fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Restricted Gillnet Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Restricted Gillnet Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(3) *Great South Channel Sliver Restricted Area—(i) Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points:

TABLE 22 TO PARAGRAPH (e)(3)(i)

Point	N lat.	W long.
GSCRA1	41°02.2'	69°02'
GSCRA2	41°43.5'	69°36.3'
GSCRA3	41°40'	69°45'
GSCRA4	41°00'	69°05'

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Great South Channel Sliver Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Sliver Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal

waters of the Gulf of Maine, except those designated the Cape Cod Bay Restricted Area in paragraph (e)(1) of this section, that lie south of 43°15' N lat. and west of 70°00' W long.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2.

Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Stellwagen Bank/Jeffreys Ledge Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Stellwagen Bank/Jeffreys Ledge Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(5) *Other Northeast Gillnet Waters Area—(i) Area.* The Other Northeast Gillnet Waters Area consists of all state and Federal U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W long. south to 36°33.03' N lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2' N lat., 71°51.5' W long. (Watch Hill Point, RI) south to 40°00' N lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in

paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(6) *Mid/South Atlantic Gillnet Waters Area*—(i) *Area*. The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY at 72°30' W long. south to 36°33.03' N lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N lat., and east to the eastern edge of the EEZ. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(ii) *Area-specific gear or vessel requirements*. From September 1 through May 31, no person or vessel may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless:

(A) The gear complies with gear marking requirements specified in paragraph (b) of this section;

(B) The gear is tended; and

(C) All gear is removed from the water and stowed on board the vessel before a vessel returns to port. No person or vessel may possess drift gillnet at night in the Mid/South Atlantic Gillnet Waters unless the gear is stowed as specified in § 229.2. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(f) *Restrictions applicable to the Southeast U.S. Restricted Area*—(1) *Area*. The Southeast U.S. Restricted Area consists of the area bounded by straight lines connecting the following points in the order stated from south to north:

TABLE 23 TO PARAGRAPH (f)(1)

Point	N lat.	W long.
SERA1	27°51'	(1)
SERA2	27°51'	80°00'

TABLE 23 TO PARAGRAPH (f)(1)—
Continued

Point	N lat.	W long.
SERA3	32°00'	80°00'
SERA4	32°36'	78°52'
SERA5	32°51'	78°36'
SERA6	33°15'	78°24'
SERA7	33°27'	78°04'
SERA8	(2)	78°33.9'

¹ Florida shoreline.

² South Carolina shoreline.

(i) *Southeast U.S. Restricted Area N*. The Southeast U.S. Restricted Area N consists of the Southeast U.S. Restricted Area from 29°00' N lat. northward.

(ii) *Southeast U.S. Restricted Area S*. The Southeast U.S. Restricted Area S consists of the Southeast U.S. Restricted Area southward of 29°00' N lat.

(2) *Restricted periods, closure, and exemptions*—(i) *Restricted periods*. The restricted period for the Southeast U.S. Restricted Area N is from November 15 through April 15, and the restricted period for the Southeast U.S. Restricted Area S is from December 1 through March 31.

(ii) *Closure for gillnets*. (A) Except as provided under paragraph (f)(2)(v) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

(B) Except as provided under paragraphs (f)(2)(iii) and (iv) of this section, fishing with gillnet in the Southeast U.S. Restricted Area S during the restricted period is prohibited.

(iii) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery*. Fishing with gillnet for sharks with webbing of 5 inches (12.7 cm) or greater stretched mesh is exempt from the restrictions under paragraph (f)(2)(ii)(B) of this section if:

(A) The gillnet is deployed so that it encloses an area of water;

(B) A valid commercial directed shark limited access permit has been issued to the vessel in accordance with 50 CFR 635.4(e) and is on board;

(C) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(D) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(E) Each set is made under the observation of a spotter plane;

(F) No gillnet is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(G) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear;

(H) The gear complies with the gear marking requirements specified in paragraph (b) of this section; and

(I) The operator of the vessel calls the Southeast Fisheries Science Center Panama City Laboratory in Panama City, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Panama City Laboratory requests that an observer be taken on board a vessel during a fishing trip at any time from December 1 through March 31 south of 29°00' N lat., no person may fish with such gillnet aboard that vessel in the Southeast U.S. Restricted Area S unless an observer is on board that vessel during the trip.

(iv) *Exemption for Spanish Mackerel component of the Southeast Atlantic gillnet fishery*. Fishing with gillnet for Spanish mackerel is exempt from the restrictions under paragraph (f)(2)(ii)(B) of this section from December 1 through December 31, and from March 1 through March 31 if:

(A) Gillnet mesh size is between 3.5 inches (8.9 cm) and 4⁷/₈ inches (12.4 cm) stretched mesh;

(B) A valid commercial vessel permit for Spanish mackerel has been issued to the vessel in accordance with 50 CFR 622.4(a)(2)(iv) and is on board;

(C) No person may fish with, set, place in the water, or have on board a vessel a gillnet with a float line longer than 800 yards (2,400 ft, 732 m);

(D) No person may fish with, set, or place in the water more than one gillnet at any time;

(E) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm);

(F) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water;

(G) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(H) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(I) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(J) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear; and

(K) The gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(8)(ii)(A) through (D) of this section for the Mid/South Atlantic Gillnet Waters.

(v) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet aboard a vessel in transit is exempt from the restrictions under paragraph (f)(2)(ii)(A) of this section if: All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum; and all buoys, high flyers, and anchors are disconnected from all gillnets. No fish may be possessed aboard such a vessel in transit.

(vi) *Restrictions for trap/pot gear.* Fishing with trap/pot gear in the Southeast U.S. Restricted Area N during the restricted period is allowed if:

(A) Trap/pot gear is not fished in a trap/pot trawl;

(B) All buoys or flotation devices are attached to the buoy line with a weak link that meets the requirements of paragraph (c)(2)(ii) of this section. The weak link has a maximum breaking strength of 600 lbs (272 kg) except in Florida State waters where the maximum breaking strength is 200 lbs (91kg);

(C) The buoy line has a maximum breaking strength of 2,200 lbs (998 kg) except in Florida State waters where the maximum breaking strength is 1,500 lbs (630 kg);

(D) The entire buoy line must be free of objects (*e.g.*, weights, floats, etc.) except where it attaches to the buoy and trap/pot;

(E) The buoy line is made of sinking line;

(F) The gear complies with gear marking requirements as specified in paragraph (b) of this section; and

(G) Trap/pot gear that is deployed in the EEZ (as defined in § 600.10 of this title) is brought back to port at the conclusion of each fishing trip.

(g) *Restrictions applicable to the Other Southeast Gillnet Waters—(1) Area.* The Other Southeast Gillnet Waters Area includes all waters bounded by 32°00' N lat. on the north (near Savannah, GA), 26°46.50' N lat. on the south (near West Palm Beach, FL), 80°00' W long. on the west, and the EEZ boundary on the east.

(2) *Closure for gillnets.* Fishing with or possessing gillnet gear in the Other Southeast Gillnet Waters Area north of 29°00' N lat. from November 15 through April 15 or south of 29°00' N lat. from December 1 through March 31 is allowed if one of the following exemptions applies:

(i) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with or possessing gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh is allowed if:

(A) The gear is marked as required in paragraph (b) of this section;

(B) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and

(C) The gear is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear.

(ii) *Exemption for Southeast Atlantic gillnet fishery.* Fishing with or possessing gillnet gear is allowed if:

(A) The gear is marked as required in paragraph (b) of this section; or

(B) The gear is fished south of 27°51' N.

(iii) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet gear aboard a vessel in transit is allowed if:

(A) All nets are covered with canvas or other similar material and securely fastened to the deck, rail, or drum; and

(B) All buoys, high flyers, and anchors are disconnected from all gillnets.

(h) *Restrictions applicable to the Southeast U.S. Monitoring Area—(1) Area.* The Southeast U.S. Monitoring Area consists of the area from 27°51' N lat. (near Sebastian Inlet, FL) south to 26°46.50' N lat. (near West Palm Beach, FL), extending from the shoreline or exemption line out to 80°00' W long.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with or possessing gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh from December 1 through March 31 is allowed if:

(i) The gear complies with the gear marking requirements specified in paragraph (b) of this section;

(ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69; and

(iii) The vessel owner/operator and crew are in compliance with observer requirements found in § 229.7.

(3) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery vessels in transit.* Possession of gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh aboard a vessel in transit from December 1 through March 31 is allowed if:

(i) All gear is stowed as specified in § 229.2; and

(ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(i) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat or restricted areas.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, the Southeast U.S. Restricted Area N from November 15 to April 15, or the Southeast U.S. Restricted Area S from December 1 through March 31 as the result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type (*i.e.*, trap/pot or gillnet) for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may, in consultation with the Take Reduction Team, revise the requirements of this section through a publication in the **Federal Register** if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

[FR Doc. 2022-04391 Filed 3-2-22; 8:45 am]

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Proposed Rules

Federal Register

Vol. 87, No. 42

Thursday, March 3, 2022

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–112; NRC–2015–0213]

Determining Which Structures, Systems, Components and Functions Are Important to Safety

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM), dated July 20, 2015, and supplemented on August 31, 2015, submitted by Kurt T. Schaefer (the petitioner). The petition was docketed by the NRC on September 4, 2015, and was assigned Docket No. PRM–50–112. The petitioner requested that the NRC amend its regulations to define the term “important to safety” and provide a set of specific criteria for determining which structures, systems, components and functions are “important to safety.” The NRC is denying the petition because the issue raised does not involve a significant safety or security concern, and the existing NRC regulations, guidance, and procedures adequately address the issue raised in the PRM. A prescriptive approach that defines criteria for structures, systems, components and functions “important to safety” would likely have unintended consequences for the licensing bases of the current operating fleet and could reduce operational flexibility without providing a clear safety benefit. The NRC’s current regulations continue to provide reasonable assurance of adequate protection of public health and safety, promote the common defense and security, and protect the environment.

DATES: The docket for the petition for rulemaking PRM–50–112 is closed on March 3, 2022.

ADDRESSES: Please refer to Docket ID NRC–2015–0213 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–2015–0213. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- *NRC’s PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC’s PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Stacy Joseph, Office of Nuclear Reactor Regulation, telephone: 301–415–3256, email: Stacy.Joseph@nrc.gov, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. The Petition

Section 2.802 of title 10 of the *Code of Federal Regulations* (10 CFR), “Petition for rulemaking—requirements for filing,” provides an opportunity for any person to petition the Commission to issue, amend, or rescind any regulation. On July 20, 2015, the NRC received a PRM from Mr. Kurt T. Schaefer (the petitioner), which was supplemented on August 31, 2015. The

NRC assigned this PRM the docket number of PRM–50–112. On January 6, 2016 (81 FR 410), the NRC published a notice of docketing and request for comment in the **Federal Register**. The petitioner requested that the NRC amend its regulations in § 50.2, “Definitions,” of 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities,” to include a definition with specific criteria for determining what structures, systems, components (SSCs) and functions are “important to safety.” The petitioner stated that “[t]he nuclear industry is on its third generation of engineers and regulators with no clear definition of what is ‘important to safety’” and that “there is no excuse for not having a concise set of functional criteria defining such a used term.”

The petitioner noted that the “NRC staff’s current position is that SSCs ‘important to safety’ consists of two subcategories, ‘safety-related’ and ‘non-safety-related.’” The petitioner stated that while safety-related SSCs are defined in § 50.2, “the regulations do not provide an equivalent set of criteria for determining which non-safety-related SSCs are ‘important to safety.’” The petitioner noted that there is very little agreement about what “non-safety-related structures, systems and components (SSCs) should be categorized as ‘important to safety.’” Furthermore, the petitioner stated that “there is only a general description of what is ‘important to safety’ in 10 CFR part 50, appendix A, [‘General Design Criteria for Nuclear Power Plants,’] and the regulations do not provide a specific set of criteria for determining which SSCs are ‘important to safety.’” The petitioner stated that “NRC Generic Letter (GL) 84–01, ‘NRC use of the terms, ‘Important to Safety’ and ‘Safety-Related,’” and its attachments, clarified the NRC staff’s use of these terms, but did not “provide a specific set of criteria for determining which non-safety-related SSCs are to be categorized as ‘important to safety.’” The petitioner stated that, “there are regulations, regulatory guidance and routinely generated regulatory evaluations, based on SSCs with no specific criteria that determines what are the applicable SSCs.” In the petition, the petitioner recommended text and specific criteria for the definition of “important to safety.”

II. Public Comments on the Petition

On January 6, 2016, the NRC requested comments from the public on the petition. As part of the request for public comments, the NRC also requested (1) any new information and analysis that could provide the basis for changes to the NRC's regulations, (2) specific examples where the lack of a formal NRC definition of the terms "safety related" and "important to safety" directly resulted in adverse consequences to external stakeholders, (3) the regulations that would require revision to reflect the new definition and the nature (objective) of the revision for each provision of the regulation that must be revised, and (4) any guidance needed to implement the new definition, including what the scope should be, level of detail, and content of the guidance.

The comment period closed on March 21, 2016, and the NRC received 12 comment submissions containing a total of 102 individual comments. A *comment submission* is a communication or document submitted to the NRC by an individual or entity with one or more individual *comments* addressing a subject or issue. Seven of the public comment submissions opposed the petition, three supported the petition, and two were responses from the petitioner to other comment submissions. Three of the public comment submissions were received after the end of the comment period, but the NRC considered them in the comment analysis. All of the comment submissions received on this petition are available as indicated in the "Availability of Documents" section of this document and on <https://www.regulations.gov> under Docket ID NRC-2015-0213.

The NRC addressed the comments in a separate document, "NRC Response to Public Comments for PRM-50-112," as listed in the "Availability of Documents" section of this document. A brief summary of these comments and the NRC's responses is included here.

Several comment submissions opposing the petition indicate that nuclear power plant applicants and licensees have an existing understanding of the safety classification terms as applied to their nuclear power plants and do not see the need for a specific definition of "important to safety" for SSCs at all nuclear power plants in § 50.2. Several comment submissions opposing the petition also assert that the specification of a definition of "important to safety" in § 50.2 might result in confusion among nuclear power plant applicants

and licensees over the classification of the SSCs at their nuclear power plants. Several comment submissions opposing the petition also indicate that significant costs might be involved with the development and implementation of a definition of "important to safety" for SSCs at all nuclear power plants that would outweigh the benefits of such an effort.

Several comment submissions supporting the petition suggest that a specific definition for "important to safety" in § 50.2 for SSCs at all nuclear power plants would resolve uncertainty regarding the scope of SSCs classified as "important to safety" and help improve safety at nuclear power plants. Comment submissions supporting the petition also stated that a specific definition of "important to safety" in the NRC regulations would help reduce cost for nuclear power plant applicants and licensees by providing regulatory certainty. Several comment submissions supporting the petition recommend that a definition of "important to safety" should be consistent or compatible with the safety classification methods developed, or under development, by other organizations.

III. Reasons for Denial

The NRC is denying the petition because the issue raised in the petition does not involve a significant safety or security concern and because the existing NRC regulations, guidance, and procedures adequately address the issue raised in the petition. More specifically, the NRC is denying the petition because the proposed rulemaking effort to define "important to safety" in § 50.2 for SSCs and their functions at all nuclear power plants does not have a safety benefit for nuclear power plants under 10 CFR part 50 and part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants." The NRC maintains that a strong regulatory framework including a clear understanding of regulatory terminology is important to provide adequate protection of public health and safety. The NRC's current regulatory framework is supported by the well-established understanding of terminology such as "important to safety," as documented in regulatory guidance, policy, and licensee and applicant documentation.

The NRC agrees with the petitioner that a specific definition of "important to safety" for SSCs and their functions at all nuclear power plants is not provided in § 50.2. As noted by the petitioner, the history of the terms "important to safety" and "safety-related" has not been straightforward. However, a rulemaking effort to define

"important to safety" in § 50.2 for SSCs and their functions at all nuclear power plants does not present a safety benefit for nuclear power plants under 10 CFR parts 50 and 52 and the existing regulatory framework provides adequate protection.

Historic Guidance and Rulemaking Activity on Defining "Important to Safety"

The evolution of the different uses of safety classification terms at the NRC has a lengthy, complicated regulatory history. For example, the meaning of "important to safety" and "safety-related" was a topic of discussion following the accident at the Three Mile Island, Unit 2 (TMI-2) nuclear power plant in 1979 and during the subsequent litigation. Specifically, in the Atomic Safety and Licensing Appeal Board Decision in the Matter of Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit No. 1) dated May 26, 1983 (ALAB-729, 17 NRC 814 (1983)), the Appeal Board confirmed the distinction between the use of the terms "important to safety" and "safety-related" during the litigation of the restart of the TMI-1 nuclear power plant.

After the TMI-2 accident evaluation, numerous NRC documents addressed the distinction between the "important to safety" and "safety-related" classifications of SSCs at nuclear power plants. For example, the NRC documented its position on the meaning of "important to safety" in a staff memorandum dated November 20, 1981, from Harold R. Denton, Director, Office of Nuclear Reactor Regulation (NRR), to all NRR personnel. This memorandum specifies the proper use of "important to safety" and "safety-related" by the NRC staff. Specifically, the 1981 Denton memorandum states that "'important to safety' encompasses the broad class of plant features, covered (not necessarily explicitly) in the General Design Criteria, that contribute in [an] important way to safe operation and protection of the public in all phases and aspects of facility operation (*i.e.*, normal operation and transient control as well as accident mitigation)." The 1981 Denton memorandum further states that "important to safety" includes "safety-related" as a subset. Subsequently, in December 1983, Harold R. Denton wrote a letter to the Utility Safety Classification Group restating the position taken in the 1981 memorandum and explaining the historical acceptance of the distinction between these terms. The 1983 Denton letter also stated that "NRC regulatory

jurisdiction involving a safety matter is not controlled by the use of terms such as ‘safety related’ or ‘important to safety.’” Generic Letter 84–01 reiterated this distinction in terminology to nuclear power plant applicants and licensees and included the 1983 Denton letter as an enclosure.

Relatedly, in NUREG–0660, Volume 1, “NRC Action Plan Developed as a Result of the TMI–2 Accident,” dated May 1980, the NRC staff proposed numerous TMI–2 Action Plan items to provide assurance of nuclear power plant safety, including Item I.F, “Quality Assurance,” to improve the quality assurance (QA) program for design, construction, and operations to provide greater assurance that plant design, construction, and operational activities are conducted in a manner commensurate with their importance to safety. In Item I.F.1, “Expand QA list,” the NRC staff proposed the development of guidance for licensees to expand their QA lists to cover equipment “important to safety” and rank the equipment in order of its importance to safety. NUREG–0737, “Clarification of TMI Action Plan Requirements,” dated November 1980, provided the list of TMI–2 Action Plan items that were subsequently approved by the Commission for implementation (which did not include Item I.F.1). As noted in NUREG–0933, “Resolution of Generic Safety Issues,” Section 1, “TMI Action Plan Items,” Item I.F.1 was considered resolved, with any further guidance to be addressed through the normal processes. Therefore, the list and ranking of “important to safety” equipment proposed in Item I.F.1 was not created because the NRC determined it was not needed at the time.

In Memorandum and Order (CLI–84–9), “In the Matter of Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1),” June 5, 1984, the Commission recognized that “the history of the use of the terms ‘important to safety’ and ‘safety-related’ is tortuous and somewhat inconsistent.” The Commission directed the NRC staff to proceed with rulemaking on the use of the terms “important to safety” and “safety-related.” In SECY–85–119, “Issuance of Proposed Rule on the Important to Safety Issue,” dated April 5, 1985, the NRC staff provided to the Commission a proposed rule to define “important to safety” for SSCs at nuclear power plants. In the staff requirements memorandum (SRM) for SECY–85–119, “Issuance of Proposed Rule on the Important-to-Safety Issue,” dated December 31, 1985, the Commission disapproved SECY–85–119 and provided direction to NRC staff for

redrafting a proposed definition of “important to safety.” In SECY–86–164, “Proposed Rule on the Important to Safety Issue,” dated May 29, 1986, the NRC staff provided a revised version of a proposed definition of “important to safety” for Commission consideration, and also reviewed the existing use of this term in the NRC’s regulations. By June 1987, three of four Commissioners voted 2–1 to disapprove the proposed rule, but no further action was taken. As documented in a memorandum dated June 24, 1991, from Samuel J. Chilk, SECY closed SECY–86–164 on the basis that informal discussions between the staff in the NRC Office of the Executive Director for Operations (OEDO) and Office of the Secretary indicated that there may no longer be any need for the Commission to address the issues in SECY–18–164. Since that time, the NRC staff has not engaged in further rulemaking action to define “important to safety.”

Use of “Important to Safety” in NRC Regulations

The term “important to safety” first appeared in appendix A to 10 CFR part 50, published as a final rule in the **Federal Register** on February 20, 1971 (36 FR 03255). However, when appendix A and appendix B, “Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,” to 10 CFR part 50 were developed in the late 1960s and early 1970s, the NRC focused its regulatory activities on a deterministic approach for safety-related SSCs, and allowed licensees to address much of the design and treatment of other SSCs in licensee documents. For example, final safety analysis reports (FSARs) for nuclear power plants typically have described some SSCs that are “important to safety” but are not classified as “safety-related” and that have a reduced amount of NRC regulatory treatment compared with “safety-related” SSCs. Over time, the NRC developed regulations that address SSCs beyond those classified as “safety-related.” For example, the NRC specifies requirements for a wide range of SSCs, including SSCs that are important to safety but not classified as “safety-related,” in § 50.49, “Environmental qualification of electric equipment important to safety for nuclear power plants”; § 50.62, “Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants”; § 50.63, “Loss of all alternating current power”; and § 50.65, “Requirements for monitoring the effectiveness of maintenance at nuclear power plants.”

In addition, the term “important to safety” appears in several reactor fire protection regulations. The NRC regulations in § 50.48, “Fire protection,” require that each operating nuclear power plant have a fire protection plan that satisfies General Design Criterion (GDC) 3, “Fire protection,” of appendix A to 10 CFR part 50. GDC 3 requires that SSCs that are “important to safety” be designed and located to minimize, consistent with other safety requirements, the probability and effect of fires and explosions. Section II.A of appendix R, “Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,” to 10 CFR part 50 in states that the fire protection program shall extend the concept of defense-in-depth to fire protection in fire areas that are “important to safety,” with the objectives of dealing with prevention, detection, and protection.

For conformance with fire protection requirements, § 50.48(c) permits operating plants to voluntarily transition their deterministic fire protection program to one based on risk-informed and performance-based requirements using National Fire Protection Association Standard (NFPA) 805, “Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants,” 2001 Edition. Section 50.48(c) also establishes an alternative regulatory structure for fire protection and permits licensees to voluntarily adopt NFPA 805, which would allow licensees the option to use a risk-informed, performance-based approach to change the deterministic fire protection configurations and procedures of their operating reactors. Licensees adopting a risk informed approach for conformance with fire protection programs did not change the safety classification of their equipment—rather, they maintained fire protection areas that are considered “important to safety” under a deterministic approach within the scope of the program. Almost all nuclear power plants that transitioned to the § 50.48(c) regulatory structure performed plant modifications that resulted in a decrease in the plant core damage frequency. If the modifications required installation of non-safety-related equipment, the additional modifications were considered “important to safety,” as the equipment was required to safely shutdown the plant following a fire event but not required to mitigate the consequences of an accident.

More recently, the NRC regulations in § 50.69, “Risk-informed categorization and treatment of structures, systems and components for nuclear power

reactors,” allow nuclear power plant licensees to request, in a license amendment, the implementation of risk-informed categorization and treatment of SSCs at their nuclear power plants. The scope of § 50.69 extends beyond safety-related SSCs and addresses the wider range of SSCs, *i.e.*, SSCs that would be considered “important to safety” at the specific nuclear power plant. Further, the NRC requires in § 50.55a(b)(3)(iii)(D) that certain licensees assess the operational readiness of pumps, valves, and dynamic restraints within the scope of the Regulatory Treatment of Non-Safety Systems (RTNSS) that are not classified as safety-related, but provide defense-in-depth for new reactors with passive cooling systems (such as the AP1000 reactor design) (*see* 82 FR 32934; July 18, 2017). The RTNSS components in new reactors with passive cooling systems would be considered “important to safety” at those specific nuclear power plants.

In sum, these issues provide additional examples of the consistent understanding and treatment of “important to safety” in the existing regulatory framework, and illustrate

how licensees and applicants may identify the safety characterization of SSCs in their documentation without a set of prescriptive criteria for determining which SSCs are important to safety. As illustrated in the previous discussion, the NRC has over time addressed SSCs classified as “important to safety” in different ways in its requirements, and in doing so, has established a framework that uses this safety classification terminology without the need for a prescriptive definition in § 50.2.

Basis for Denial

Based on many years of experience with the current safety classification terminology, nuclear power plant applicants and licensees under 10 CFR part 50 and part 52 have an established understanding of the importance to safety for all SSCs in nuclear power plants as documented in their specific licensing basis documentation (*e.g.*, Final Safety Analysis Reports or Design Control Documents). In addition, the NRC and licensees have a common understanding of the foundation of what constitutes “important to safety” as demonstrated in the guidance documents and generic communications

discussed previously (*e.g.*, the 1981 memorandum from Harold R. Denton to the NRR staff, 1983 letter from Harold R. Denton to the Utility Safety Classification Group, and Generic Letter 84–01). Moreover, the NRC reviews safety classification information in applications on a case-by-case basis. The petitioner has not provided, and NRC staff has not identified, a safety reason to create criteria, either prescriptive or performance based, defining “important to safety” in § 50.2.

As a result, a rulemaking effort to add a definition for “important to safety” for SSCs and their functions in § 50.2 does not have a safety benefit for nuclear power plants under 10 CFR parts 50 and 52. Further, the NRC’s current regulatory framework is supported by the well-established understanding and application of terminology such as “important to safety,” as documented in regulatory guidance, policy, and licensee and applicant documentation.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./Federal Register citation
Generic Letter 1984–01, “NRC Use of the Terms, ‘Important to Safety’ and Safety Related,” dated January 5, 1984.	ML031150515.
Letter dated December 19, 1983, from Harold R. Denton, Director, Office of Nuclear Reactor Regulation, to T.S. Ellis, III, Esq., on behalf of the Utility Safety Classification Group.	ML17150A235.
NUREG–0660, Volume 1, “NRC Action Plan Developed as a Result of the TMI–2 Accident,” dated May 1980	ML072470526.
NUREG–0737, “Clarification of TMI Action Plan Requirements,” dated November 1980	ML051400209.
NUREG–0933, “Resolution of Generic Safety Issues,” Section 1, “TMI Action Plan Items”	https://www.nrc.gov/sr0933/ .
Staff memorandum dated November 20, 1981, from Harold R. Denton, Director, Office of Nuclear Reactor Regulation, to all NRR Personnel.	ML111230453.
SECY–85–119, “Issuance of Proposed Rule on the Important-To-Safety Issue,” dated April 5, 1985	ML15322A002.
SRM–SECY–85–119, “Issuance of Proposed Rule on the Important-To-Safety Issue,” dated December 31, 1985.	ML15322A003.
SECY–86–164, “Proposed Rule on the Important-To-Safety Issue,” dated May 29, 1986	ML15322A005.
Memo from the Secretary of the Commission dated June 24, 1991, withdrawing the proposed rulemaking in SECY–86–164.	ML15322A006.
Federal Register Notice: PRM–50–112, Determining Which Structures, Systems, Components and Functions are Important to Safety, Petition for Rulemaking; Notice of Docketing and Request for Comment.	ML15266A002.
PRM–50–112 Petition from Kurt Schaefer Determining Which Structures, Systems, Components and Functions are Important to Safety.	ML15278A208.
PRM–50–112 Supplement to Petition from Kurt Schaefer Determining Which Structures, Systems, Components and Functions are Important to Safety.	ML15278A211.
Memorandum and Order (CLI–84–9), “In the Matter of Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1),” June 5, 1984.	ML20091K598.
Three Mile Island Nuclear Station, Unit No. 1) dated May 26, 1983 (ALAB–729, 17 NRC 814 (1983))	ML16357A784.
National Fire Protection Association Standard (NFPA)–805, “Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants,” 2001 Edition.	https://www.nfpa.org/ .
Incorporation by Reference of American Society of Mechanical Engineers Codes and Code Cases (July 18, 2017).	82 FR 32934.
NRC Responses to Public Comments for PRM–50–112	ML21123A223.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking

website at <https://www.regulations.gov> under Docket ID NRC–2015–0213.

V. Conclusion

For the reasons cited in this document, the NRC is denying PRM–50–112. The petition did not present

any significant new information or arguments that would warrant the requested amendment. Current requirements continue to provide reasonable assurance of adequate protection of public health and safety, promote the common defense and security, and protect the environment.

Dated: February 22, 2022.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2022-04052 Filed 3-2-22; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE-2020-BT-STD-0013]

RIN 1904-AE50

Energy Conservation Program: Energy Conservation Standards for Battery Chargers, Webinar and Availability of the Preliminary Technical Support Document

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of a webinar and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (“DOE”) will hold a webinar to discuss and receive comments on the preliminary analysis it has conducted for purposes of evaluating energy conservation standards for battery chargers. The meeting will cover the analytical framework, models, and tools that DOE is using to evaluate potential standards for this product; the results of preliminary analyses performed by DOE for this product; the potential energy conservation standard levels derived from these analyses that DOE could consider for this product should it determine that proposed amendments are necessary; and any other issues relevant to the evaluation of energy conservation standards for battery chargers. In addition, DOE encourages written comments on these subjects. To inform interested parties and to facilitate this process, DOE has prepared an agenda, a preliminary technical support document (“TSD”), and briefing materials, which are available on the DOE website at: www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=26&action=viewlive.

DATES:

Meeting: DOE will hold a webinar on Thursday, April 21, 2022, from 1:00 p.m. to 4:00 p.m. See section IV, “Public Participation,” for webinar registration information, participant instructions and information about the capabilities available to webinar participants.

Comments: Written comments and information will be accepted on or before, May 2, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2020-BT-STD-0013, by any of the following methods:

1. **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.

2. **Email:** to batterychargers2020STD0013@ee.doe.gov. Include docket number EERE-2020-BT-STD-0013 in the subject line of the message.

No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus 2019 (COVID-19) pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586-1445 to discuss the need for alternative arrangements. Once the COVID-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, public meeting transcripts, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at www.regulations.gov/docket/EERE-2020-BT-STD-0013. The docket web

page contains instructions on how to access all documents, including public comments in the docket. See section IV for information on how to submit comments through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE-2J, 1000 Independence Avenue SW, Washington, DC 20585-0121. Email: ApplianceStandardsQuestions@ee.doe.gov.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-8145. Email: Michael.Kido@hq.doe.gov.

For further information on how to submit a comment, review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
 - A. Authority
 - B. Rulemaking Process
 - C. Deviation From Appendix A
- II. Background
 - A. Current Standards
 - B. Current Process
- III. Summary of the Analyses Performed by DOE
 - A. Market and Technology Assessment
 - B. Screening Analysis
 - C. Engineering Analysis
 - D. Markups Analysis
 - E. Energy Use Analysis
 - F. Life-Cycle Cost and Payback Period Analyses
 - G. National Impact Analysis
- IV. Public Participation
 - A. Participation in the Webinar
 - B. Procedure for Submitting Prepared General Statements for Distribution
 - C. Conduct of the Webinar
 - D. Submission of Comments
- V. Approval of the Office of the Secretary

I. Introduction

A. Authority

The Energy Policy and Conservation Act, as amended (“EPCA”),¹ authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291-6317) Title III, Part B² of EPCA established the Energy Conservation

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116-260 (Dec. 27, 2020).

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

Program for Consumer Products Other Than Automobiles. These products include battery chargers, the subject of this document. (42 U.S.C. 6291(32); 42 U.S.C. 6295(u)(1)(E)(II); 42 U.S.C. 6292(a)(20))

EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (“NOPR”) including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) Not later than three years after issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B))

Under EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

DOE is publishing this Preliminary Analysis to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including battery chargers. As noted, EPCA requires that any new or amended energy conservation standard prescribed by the Secretary of Energy (“Secretary”) be designed to achieve the maximum improvement in energy efficiency (or water efficiency for certain products specified by EPCA) that is

technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) The Secretary may not prescribe an amended or new standard that will not result in significant conservation of energy, or is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3))

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B)) The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.³ For example, the United States rejoined the Paris Agreement on February 19, 2021. As part of that agreement, the United States has committed to reducing greenhouse gas (“GHG”) emissions in order to limit the rise in mean global temperature. As such, energy savings that reduce GHG emission have taken on greater importance. Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and full-fuel-cycle (“FFC”) effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis. DOE estimates a

combined total of 0.96 quads of FFC energy savings at the max-tech efficiency levels for battery chargers. This represents a 24 percent energy savings relative to the no-new-standards case energy consumption for battery chargers. DOE has initially determined the energy savings for the candidate standard levels considered in this preliminary analysis are “significant” within the meaning of 42 U.S.C. 6295(o)(3)(B).

To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	<ul style="list-style-type: none"> • Shipments Analysis. • National Impact Analysis. • Energy Analysis.
Technological Feasibility	<ul style="list-style-type: none"> • Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	<ul style="list-style-type: none"> • Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis.
1. Economic impact on manufacturers and consumers	

³ See 86 FR 70892, 70901 (Dec. 13, 2021).

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS—Continued

EPCA requirement	Corresponding DOE analysis
2. Lifetime operating cost savings compared to increased cost for the product	<ul style="list-style-type: none"> • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis. • Markups for Product Price Analysis. • Energy Analysis.
3. Total projected energy savings	<ul style="list-style-type: none"> • Life-Cycle Cost and Payback Period Analysis. • Shipments Analysis. • National Impact Analysis.
4. Impact on utility or performance	<ul style="list-style-type: none"> • Screening Analysis. • Engineering Analysis. • Manufacturer Impact Analysis.
5. Impact of any lessening of competition	<ul style="list-style-type: none"> • Shipments Analysis. • National Impact Analysis.
6. Need for national energy and water conservation	<ul style="list-style-type: none"> • Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis.
7. Other factors the Secretary considers relevant	<ul style="list-style-type: none"> • Monetization of Emission Reductions⁴ Benefits. • Regulatory Impact Analysis.

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an “anti-backsliding” provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of

energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (“EISA 2007”), Public Law 110–140 (December 19, 2007), any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE’s current test procedures for battery chargers address standby mode and off mode energy use. In this Preliminary Analysis, DOE intends to incorporate such energy use into any amended energy conservation standards it adopts in the final rule.

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools

that DOE intends to use to evaluate standards for the product at issue and the results of preliminary analyses DOE performed for the product.

DOE is examining whether to amend the current standards pursuant to its obligations under EPCA. This notification announces the availability of the preliminary TSD, which details the preliminary analyses and summarizes the preliminary results of DOE’s analyses. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (“appendix A”), DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking. Section 6(a)(2) of appendix A states that if the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking (“ANOPR”). DOE is opting to deviate from this step by publishing a preliminary analysis without a framework document. A framework document is intended to introduce and summarize generally the various analyses DOE conducts during the rulemaking process and requests initial feedback from interested parties. As discussed further in the following section, prior to this notification of the preliminary analysis, DOE issued a request for information on September 16, 2020 (“September 2020 RFI”) in

⁴ Currently, in compliance with the preliminary injunction issued on February 11, 2022, in *Louisiana v. Biden*, No. 21–cv–1074–JDC–KK (W.D. La.), DOE is not monetizing the costs of greenhouse gas emissions.

which DOE discussed the previous battery charger energy conservation standards final rule published on June 13, 2016 (81 FR 38266, “June 2016 Final Rule”). 85 FR 57787. In that RFI, DOE requested comment on whether there were changes to the technologies considered as part of the June 2016 Final Rule that would affect potential amended standards and on any aspect of its economic justification analysis. 85 FR 57787, 57791–57798. While DOE received comments on the assumptions employed in the analysis conducted in support of the June 2016 Final Rule (AHAM, No. 7 at p.3 and pp.5–6),⁵ DOE did not receive comments or data suggesting DOE rely on a different analytical framework from that conducted for the June 2016 Final Rule. As DOE intends to rely on substantively the same analytical methods as in the most recent rulemaking, publication of a framework document would not introduce an analytical framework different from that on which comment was requested in the September 2020 RFI and on which comment was received. As such, DOE is not publishing a framework document.

Further, section 6(d)(2) of appendix A specifies that the length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For this preliminary analysis, DOE has opted to instead provide a 60-day comment period.

As stated, DOE requested comment in the September 2020 RFI on the analysis conducted in support of the June 2016 Final Rule and provided stakeholders a 75-day comment period. DOE, however, did not receive comments suggesting a need to substantively change the analytical approach previously taken. Given that the analysis will largely remain the same, and in light of the 75-day comment period DOE has already provided with its September 2020 RFI, DOE has determined that a 60-day comment period is sufficient to enable interested parties to review the tentative methodologies and accompanying analysis to develop meaningful comments in response to the battery charger preliminary analysis.

⁵ The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to amend standards for battery chargers. (Docket No. EERE-2020-BT-TP-0013, which is maintained at www.regulations.gov). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

II. Background

A. Current Standards

In its June 2016 Final Rule, DOE prescribed the current energy conservation standards for battery chargers manufactured on and after June 13, 2018. 81 FR 38266. These standards are set forth in DOE’s regulations at 10 CFR 430.32(z) and are repeated in Table II.1. The currently applicable DOE test procedure for battery chargers appears at 10 CFR part 430 subpart B, appendix Y (“Appendix Y”).

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS

Product class	Maximum UEC (kWh/yr) (as a function of rated battery energy (“E _{batt} ”))
1	3.04.
2	0.1440 * E _{batt} + 2.95.
3	For E _{batt} <10 Wh, 1.42 kWh/y, E _{batt} ≥10 Wh, 0.0255 * E _{batt} + 1.16.
4	0.11 * E _{batt} + 3.18.
5	0.0257 * E _{batt} + .815.
6	0.0778 * E _{batt} + 2.4.
7	0.0502 * E _{batt} + 4.53.

B. Current Process

On September 16, 2020, DOE initiated an early assessment RFI review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for battery chargers. 85 FR 57787 (“September 2020 Early Assessment Review RFI”). Through that RFI, DOE sought data and information that could enable the agency to determine whether DOE should propose a “no new standard” determination because a more stringent standard: (1) Would not result in a significant savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of foregoing. *Id.*

Comments received to date as part of the current process have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received.

III. Summary of the Analyses Performed by DOE

For the battery chargers covered in this preliminary analysis, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy use; (4) life cycle cost (“LCC”) and payback period (“PBP”); and (5) national impacts. The

preliminary TSD that presents the methodology and results of each of these analyses is available at www.regulations.gov/docket/EERE-2020-BT-STD-0013.

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses or are preliminary analyses that will be expanded if DOE determines that a NOPR is warranted to propose amended energy conservation standards. These analyses include: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and the national impact analysis (“NIA”). In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR should one be issued.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including general characteristics of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment include: (1) A determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of the product.

See chapter 3 of the preliminary TSD for further discussion of the market and technology assessment.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have a significant adverse impact on the utility of the product for significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

If DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

See chapter 4 of the preliminary TSD for further discussion of the screening analysis.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of battery chargers. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.*, the “efficiency analysis”) and the determination of product cost at each efficiency level (*i.e.*, the “cost analysis”). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the manufacturer production cost (“MPC”) for the baseline as well as higher efficiency levels. The output of the engineering analysis is a set of cost-

efficiency “curves” that are used in downstream analyses (*i.e.*, the LCC and PBP analyses and the NIA).

DOE converts the MPC to the manufacturer selling price (“MSP”) by applying a manufacturer markup. The MSP is the price the manufacturer charges its first customer, when selling into the product distribution channels. The manufacturer markup accounts for manufacturer non-production costs and profit margin. DOE developed the manufacturer markup by examining publicly available financial information for manufacturers of the covered product.

See chapter 5 of the preliminary TSD for additional detail on the engineering analysis.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.*, retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.⁶

Chapter 6 of the preliminary TSD provides details on DOE’s development of markups for battery chargers.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of battery chargers at different efficiencies in representative U.S. households and businesses, and to assess the energy savings potential of increased battery charger efficiency. The energy use analysis estimates the range of energy use of battery chargers in the

⁶ Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

field (*i.e.*, as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adopting amended or new standards.

Chapter 7 of the preliminary TSD addresses the energy use analysis.

F. Life-Cycle Cost and Payback Period Analyses

The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

G. National Impact Analysis

The NIA estimates the national energy savings (“NES”) and the net present value (“NPV”) of total consumer costs and savings expected to result from amended standards at specific efficiency levels (referred to as candidate standard levels).⁷ DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of battery chargers sold from 2027 through 2056.

⁷ The NIA accounts for impacts in the 50 states and U.S. territories.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections (“no-new-standards case”). The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels for that class. For each efficiency level, DOE considers how a given standard would likely affect the market shares of product with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each efficiency level. Interested parties can review DOE’s analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs. Critical inputs to this analysis include shipments projections, estimated product lifetimes, product installed costs and operating costs, product annual energy consumption, the base case efficiency projection, and discount rates.

DOE estimates a combined total of 0.96 quads of FFC energy savings at the max-tech efficiency levels for battery chargers. Combined FFC energy savings at Efficiency Level 1 for all product/equipment classes are estimated to be 0.28 quads.

Chapter 10 of the preliminary TSD addresses the NIA.

IV. Public Participation

DOE invites public participation in this process through participation in the webinar and submission of written comments and information. After the webinar and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Following such consideration, the Department will publish either a determination that the standards for battery chargers need not be amended or a NOPR proposing to amend those standards. The NOPR, should one be issued, would include proposed energy conservation standards for the products covered by that rulemaking, and members of the public would be given an opportunity to

submit written and oral comments on the proposed standards.

A. Participation in the Webinar

The time and date for the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE’s website: www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit such request to

ApplianceStandardsQuestions@ee.doe.gov. Persons who wish to speak should include with their request a computer file in Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this document and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the

procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the Preliminary Analysis.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this Preliminary Analysis, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this Preliminary Analysis. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time allows, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this Preliminary Analysis. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE invites all interested parties, regardless of whether they participate in the public meeting, to submit in writing by May 2, 2022, comments and information on matters addressed in this notification and on other matters relevant to DOE’s consideration of amended energy conservation standards for battery chargers. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The

www.regulations.gov web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to www.regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”). Comments submitted through www.regulations.gov cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through www.regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that www.regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to www.regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover

letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters’ names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE’s policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of a webinar and availability of preliminary technical support document.

Signing Authority

This document of the Department of Energy was signed on February 25, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in

compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register Liaison Officer** has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 28, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022-04495 Filed 3-2-22; 8:45 am]

BILLING CODE 6450-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 702, 708a, 708b, 750 and 790

[NCUA-2022-0008]

RIN 3133-AF41

Asset Threshold for Determining the Appropriate Supervisory Office

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA Board (Board) is proposing to amend its regulations to revise the \$10 billion asset threshold used for assigning supervision of consumer federally insured credit unions (FICUs) to the Office of National Examinations and Supervision (ONES). The proposed rule would only apply to FICUs whose assets are \$10 billion or more (covered credit unions). The proposed rule would provide that covered credit unions with less than \$15 billion in total assets (tier I covered credit unions) not currently supervised by ONES will be supervised by the appropriate NCUA Regional Office. Tier I covered credit unions currently supervised by ONES and covered credit unions with \$15 billion and more in total assets (tier II and tier III covered credit unions) would continue to be supervised by ONES. The proposed rule would not alter any regulatory requirements for covered credit unions.

DATES: Comments must be received by May 2, 2022.

ADDRESSES: You may submit written comments, identified by RIN 3133-AF41, by any of the following methods (please send comments by one method only):

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. The docket

number for this direct final rule is NCUA–2022–0008. Follow the instructions for submitting comments.

- *Fax:* (703) 518–6319. Include “[Your Name]—Comments on Asset Threshold for Determining the Appropriate Supervisory Office” in the transmittal.

- *Mail:* Address to Melane Conyers-Ausbrosks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

- *Hand Delivery/Courier:* Same as mail address.

Public inspection: You may view all public comments on the Federal eRulemaking Portal at <https://www.regulations.gov>, as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT:

Yvonne Applonie, Director of Supervision, Office of National Examinations and Supervision; or Rachel Ackmann, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. Yvonne Applonie can also be reached at (703) 518–6595, and Rachel Ackmann can be reached at (703) 548–2601.

SUPPLEMENTARY INFORMATION:

I. Background

Part 702 Capital Planning and Stress Testing Requirements

Part 702, subpart C, of the NCUA’s regulations (part 702) implements the NCUA’s capital planning and stress testing requirements for consumer FICUs.¹ As discussed above, a consumer FICU is defined as a covered credit union, and subject to capital planning and stress testing requirements, if it has \$10 billion or more in total assets.² Covered credit unions are then further divided into three tiers, and varying levels of regulatory requirements are imposed based on those asset tiers. For

example, tier I credit unions are not subject to stress testing requirements, however tier II and tier III credit unions are subject to stress testing requirements. Under part 702:

- A tier I credit union is a covered credit union that has less than \$15 billion in total assets;
- A tier II credit union is a covered credit union that has \$15 billion or more in total assets, but less than \$20 billion in total assets, or is otherwise designated as a tier II credit union by the NCUA; and
- A tier III credit union is a covered credit union that has \$20 billion or more in total assets, or is otherwise designated as a tier III credit union by the NCUA.

Agency Structure

In 2012, the NCUA established a new office, the Office of National Examinations and Supervision (ONES), and reorganized its central and field office structure. As part of its internal restructuring, the NCUA transferred the responsibility for supervising covered credit unions to ONES from the Regional Offices.³ Initially, covered credit unions were transferred to ONES on January 1, 2014. Annually thereafter FICUs newly reporting assets of \$10 billion or more on March 31 of a given calendar year are reassigned to ONES on the first day of the following calendar year.

COVID–19 Pandemic

Many FICUs have experienced significant balance sheet growth as a result of the COVID–19 Pandemic and the corresponding policy response.⁴ For example, FICUs with just below \$10 billion in total assets incurred balance sheet growth of about 14 percent on average during the COVID–19 Pandemic, and in one case more than 34 percent. In contrast, FICUs with assets just below the \$10 billion threshold had an average asset growth of only 9 percent in 2019.

In March 2021, the Board provided regulatory relief to FICUs meeting certain asset thresholds through an interim final rule (Asset Threshold IFR).⁵ The Asset Threshold IFR permitted FICUs to continue to use financial data as of March 31, 2020, to determine the applicability of certain regulations for calendar years 2021 and 2022, instead of assets reported as of March 31, 2021. The Asset Threshold IFR also made a conforming amendment

to the measurement date for determining ONES supervision. Under the Asset Threshold IFR, the NCUA used financial data as of March 31, 2020, instead of March 31, 2021, to determine the appropriate supervisory office of FICUs for calendar year 2022. As a result, no FICU was transitioned to ONES supervision for calendar year 2022, even if the FICU had \$10 billion or more in total assets as of March 31, 2021.

The next effective measurement period to determine whether a FICU is subject to capital planning and stress testing requirements and ONES supervision is March 31, 2022. Unless the threshold is changed, the Board anticipates at least nine new FICUs will meet or exceed the \$10 billion threshold as of March 31, 2022, and would become subject to ONES supervision beginning January 1, 2023.

II. The Proposed Rule

The Board has reconsidered its policy of assigning all covered credit unions to ONES supervision. Under the proposed rule, tier II and tier III covered credit unions would remain subject to ONES supervision. The Board, however, would not assign tier I covered credit unions to ONES supervision.⁶ Tier I covered credit unions would generally remain subject to Regional Office supervision until they become tier II covered credit unions.⁷

Tier I covered credit unions that are currently supervised by ONES, however, would be grandfathered under the proposed rule and remain subject to ONES supervision.⁸ The proposed rule would grandfather tier I covered credit unions currently subject to ONES supervision to provide continuity for institutions that are already accustomed to ONES supervision. The Board believes that most grandfathered tier I covered credit unions would likely become tier II credit unions, and subject to ONES supervision, due to organic

⁶ As discussed in the *Reservation of Authority* section, the Board has the option of using its existing reservation of authority in part 702 to transfer a tier I covered credit union to ONES supervision before it becomes a tier II or tier III covered credit union.

⁷ The proposed rule would also revise the authority citation in part 702 to cite 12 U.S.C. 1784(a) and 1786(e), which were previously added but inadvertently removed from the Code of Federal Regulations.

⁸ Accordingly, if a FICU had \$10 billion or more in total assets on or before March 31, 2020, then it is currently subject to ONES supervision. If a FICU has crossed the \$10 billion threshold since March 31, 2020, then it is not currently subject to ONES supervision due to the Asset Threshold IFR and, under this proposed rule, would not be subject to ONES supervision until it is a tier II covered credit union.

¹ 12 CFR 702.301. The term consumer FICU is being used instead of the term natural person FICU. This terminology is being used for clarity, however, the term natural person FICU will continue to be used for the accompanying regulatory text changes for consistency with other sections of the NCUA’s regulations.

² 12 CFR 702.302.

³ In general, Regional Office means the office of NCUA located in the designated geographical areas in which the office of the FICU is located.

⁴ See generally, 86 FR 15397 (Mar. 23, 2021).

⁵ *Id.*

growth within a short timeframe. Given these covered credit unions would once again be subject to ONES supervision as tier II credit unions within a short timeframe, the Board believes transitioning the grandfathered credit unions to Regional Office supervision is unnecessary. The Board, however, invites comments on whether grandfathered credit unions should be subject to Regional Office supervision until they become tier II covered credit unions.

The Board has reconsidered its position that all covered credit unions should transition to ONES for two reasons. First, the agency can more effectively manage its resources by continuing to supervise most tier I covered credit unions through the Regional Offices. Without delaying the transition of tier I covered credit unions to ONES supervision, the number of covered credit unions supervised by ONES would approximately double in calendar year 2023, which would require a substantial reallocation of agency resources.

Second, the Board has reconsidered the level of risk to the National Credit Union Share Insurance Fund (NCUSIF) posed by tier I covered credit unions. Applying a historical loss factor of 30 percent on a FICU failure to the NCUSIF's equity suggests that a \$15 billion credit union presents the same relative risk at the end of 2020 as an approximately \$10 billion FICU did at the beginning of 2013 when covered credit unions were first transitioned to ONES supervision.

The Board also does not believe that altering tier I covered credit unions' transition to ONES supervision results in undue risk to the NCUSIF. Regulatory requirements for covered credit unions are not affected by the proposed rule. For example, capital planning and stress testing requirements are initially triggered at \$10 billion in assets.⁹ These requirements will remain in effect for all covered credit unions regardless of a covered credit union's supervisory office.¹⁰

Additionally, the NCUA has implemented various supervisory tools which enhance offsite monitoring of covered credit union risk. Under the proposed rule, these tools would remain in use for the supervision of covered tier I credit unions regardless of their supervisory office. Specifically, all covered credit unions would continue

to be required to submit data to the NCUA under the capital planning and stress test rule.¹¹ Data collection is part of the NCUA's strategic initiative to enhance supervision and is used to inform qualitative and quantitative assessments and ratings of covered credit unions. Further, this data provides insight for offsite supervision and enable timely risk identification and mitigation. The NCUA shares the results of this information collection and collaborates with applicable state supervisory authorities on joint supervisory efforts.

Finally, as discussed above, ONES was formed, in part, to provide enhanced supervision of FICUs systemically important to the NCUSIF. And while regulatory requirements remain the same for tier I covered credit unions under the proposed rule, certain aspects of ONES enhanced supervision may vary for covered credit unions supervised by Regional Offices. The Board believes this difference, along with other more technical procedures unique to ONES supervision, is not necessary to adequately supervise tier I covered credit unions given the mitigating factors discussed above.

Therefore, the Board does not believe that altering tier I covered credit unions' transition to ONES supervision results in undue risk to the NCUSIF.

Reservation of Authority

The proposed change to the threshold for FICUs being supervised by ONES would generally apply to new tier I covered credit unions. However, there may be rare instances that warrant a FICU with assets between \$10 billion and \$15 billion to be assigned to ONES. To address such situations, the Board may use existing reservations of authority in part 702 to transfer a tier I covered credit union to ONES supervision before it becomes a tier II or tier III covered credit union.¹² When making any such determination, the Board would consider all relevant factors affecting the covered credit union's safety and soundness, such as its activities, business model, risk-management practices, and the types of assets held. Any exercise of authority under this section by the NCUA would be in writing and would consider the financial condition, size, complexity, risk profile, scope of operations, and level of net worth of the covered credit union, in addition to any other relevant factors. The Board solicits comments on its proposed use of the reservation of

authority to transfer a tier I covered credit to ONES supervision.

III. Legal Authority

The Board is issuing this proposed rule pursuant to its authority under the Federal Credit Union Act (FCU Act).¹³ Under the FCU Act, the NCUA is the chartering and supervisory authority for federal credit unions (FCUs) and the federal supervisory authority for FICUs. The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe regulations for the administration of the FCU Act.¹⁴ Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue regulations necessary or appropriate to carry out its role as share insurer for all FICUs.¹⁵ Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

IV. Request for Comments

The Board seeks comment on all aspects of this proposed rule. In particular, the Board seeks comment on the advantages and disadvantages of adjusting the threshold for determining which credit unions are supervised by ONES. Should the Board consider other amendments to its supervisory process for covered credit unions? Is the definition of ONES credit union sufficiently clear? Should the definition state explicitly that it does not include tier I covered credit unions that are not grandfathered?

V. Regulatory Procedures

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden (44 U.S.C. 3507(d)). For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information collection. The proposed rule will not affect any existing or impose any new information collection requirements.

The information collection requirement under Office of Management and Budget (OMB) No. 3133-0199, Capital Planning and Stress Testing, that tier I covered credit unions retain a record of their annual capital

⁹ 12 CFR 702.302.

¹⁰ Tier I covered credit unions' capital plans would be subject to Regional Office review (provided the tier I covered credit union is not grandfathered under ONES supervision).

¹¹ 12 CFR 702.306(d).

¹² 12 CFR 702.301.

¹³ 12 U.S.C. 1751 *et seq.*

¹⁴ 12 U.S.C. 1766(a).

¹⁵ 12 U.S.C. 1789.

plan will remain in effect regardless of a covered credit union's supervisory office.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers credit unions with assets less than \$100 million to be small entities.¹⁶ A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. The proposed rule affects the supervisory office assigned to oversee large FICUs with \$10 billion or more in total assets. Therefore, the Board certifies that it would not have a significant economic impact on a substantial number of small credit unions.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles.

This proposed rule would not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General

Government Appropriations Act, 1999.¹⁷

List of Subjects

12 CFR Part 700

Credit unions.

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 708a

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 708b

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 750

Credit unions, Golden parachute payments, Indemnity payments.

12 CFR Part 790

Organization and functions (Government agencies).

By the NCUA Board on February 17, 2022.
Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons discussed in the preamble, the Board proposes to amend 12 CFR parts 700, 701, 702, 708a, 708b, 750, and 790 as follows:

PART 700—DEFINITIONS

■ 1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

■ 2. In § 700.2, revise the definitions of “Regional Director” and “Regional Office” to read as follows:

§ 700.2 Definitions.

* * * * *

Regional Director means the representative of NCUA in the designated geographical area in which the office of the federally insured credit union is located or, for ONES credit unions under part 702 of this chapter, the Director of the Office of National Examinations and Supervision.

Regional Office means the office of NCUA located in the designated geographical areas in which the office of the federally insured credit union is located or, for ONES credit unions under part 702 of this chapter, the Office of National Examinations and Supervision.

* * * * *

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 3. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 4. In § 701.14, revise paragraph (c)(3)(i) to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

* * * * *

(c) * * *

(3) * * *

(i) *Where to file.* Notices will be filed with the appropriate Regional Director or, in the case of a corporate credit union or a ONES credit union under part 702 of this chapter, with the Director of the Office of National Examinations and Supervision. All references to Regional Director will, for corporate credit unions and ONES credit unions under part 702 of this chapter, mean the Director of Office of National Examinations and Supervision. State-chartered federally insured credit unions will also file a copy of the notice with their state supervisor.

* * * * *

PART 702—CAPITAL ADEQUACY

■ 5. The authority citation for part 702 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1784(a), 1786(e), 1790d.

■ 6. In § 702.302, add a definition of “ONES credit union,” in alphabetical order, to read as follows:

§ 702.302 Definitions.

* * * * *

ONES credit union means a credit union subject to supervision by the Office of National Examinations and Supervision and includes tier I covered credit unions that had \$10 billion or more in total assets as of March 31, 2020, and tier II and tier III covered credit unions.

* * * * *

PART 708a—BANK CONVERSIONS AND MERGERS

■ 7. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 1785(b), and 1785(c).

¹⁶ NCUA Interpretive Ruling and Policy Statement 15–1, 80 FR 57512 (Sept. 24, 2015).

¹⁷ Public Law 105–277, 112 Stat. 2681 (1998).

■ 8. In § 708a.101, revise the second sentence of the definition of “Regional Director” to read as follows:

§ 708a.101 Definitions.

* * * * *

Regional Director * * * For corporate credit unions and natural person credit unions defined as ONES credit unions under part 702 of this chapter, Regional Director means the Director of NCUA’s Office of National Examinations and Supervision.

* * * * *

■ 9. In § 708a.301, revise the second sentence of the definition of “Regional Director” to read as follows:

§ 708a.301 Definitions.

* * * * *

Regional Director * * * For corporate credit unions and natural person credit unions defined as ONES credit unions under part 702 of this chapter, Regional Director means the Director of NCUA’s Office of National Examinations and Supervision.

* * * * *

PART 708b—MERGERS OF INSURED CREDIT UNIONS INTO OTHER CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

■ 10. The authority citation for part 708b continues to read as follows:

Authority: 12 U.S.C. 1752(7), 1766, 1785, 1786, 1789.

■ 11. In § 708b.2, revise the second sentence of the definition of “Regional Director” to read as follows:

§ 708b.2 Definitions.

* * * * *

Regional Director * * * For corporate credit unions and natural person credit unions defined as ONES credit unions under part 702 of this chapter, Regional Director means the Director of NCUA’s Office of National Examinations and Supervision.

* * * * *

PART 750—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

■ 10. The authority citation for part 750 continues to read as follows:

Authority: 12 U.S.C. 1786(t).

■ 11. In § 750.6, revise the third sentence of paragraph (a) to read as follows:

§ 750.6 Filing instructions; appeal.

(a) * * * In the case of a Federal or state-chartered corporate credit union or ONES credit union under part 702 of this chapter, such written requests must

be submitted to the Director of the Office of National Examinations and Supervision. * * *

* * * * *

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

■ 12. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

■ 13. In § 790.2, revise the first sentence of paragraph (c)(2) to read as follows:

§ 790.2 Central and field office organization.

* * * * *

(c) * * *

(2) * * * Similar to a Regional

Director, the Director of the Office of National Examinations and Supervision manages NCUA’s supervisory program over credit unions; however, it oversees the activities for corporate credit unions and of natural person credit unions defined as ONES credit unions under part 702 of this chapter, in accordance with established policies. * * *

[FR Doc. 2022–03846 Filed 3–2–22; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0164; Airspace Docket No. 22–ACE–8]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Jefferson, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Jefferson, IA. The FAA is proposing this action as the result of an airspace review as part of the decommissioning of the Jefferson non-directional beacon (NDB). The geographic coordinates of the airport would also be updated to coincide with the FAA’s aeronautical database.

DATES: Comments must be received on or before April 18, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–

0164/Airspace Docket No. 22–ACE–8 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 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. FAA Order JO 7400.11F 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 would amend the Class E airspace extending upward from 700 feet above the surface at Jefferson Municipal Airport, Jefferson, IA, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2022-0164/Airspace Docket No. 22-ACE-8." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface within a 6.4-mile (increased from a 6.3-mile) radius of Jefferson Municipal Airport, Jefferson, IA; removing the Jefferson NDB and associated extension from the airspace legal description; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review as part of the decommissioning of the Jefferson NDB which provided navigation information for the instrument procedures this airport.

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 FAA Order JO 7400.11.

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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 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 IA E5 Jefferson, IA [Amended]

Jefferson Municipal Airport, IA
(Lat. 42°00'35" N, long. 94°20'31" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Jefferson Municipal Airport.

Issued in Fort Worth, Texas, on February 28, 2022.

Martin A. Skinner,

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

[FR Doc. 2022-04458 Filed 3-2-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2022-0163; Airspace Docket No. 22-ACE-7]

RIN 2120-AA66

Proposed Amendment of Class E Airspace; Hugoton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Hugoton, KS. The FAA is proposing this action as the result of an airspace review as part

of the decommissioning of the Hugoton non-directional beacon (NDB). The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before April 18, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-9826, or (800) 647-5527. You must identify FAA Docket No. FAA-2022-0163/Airspace Docket No. 22-ACE-7 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 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. FAA Order JO 7400.11F 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 would amend the Class E airspace extending upward from 700 feet above the surface at Hugoton Municipal Airport, Hugoton, KS, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2022-0163/Airspace Docket No. 22-ACE-7." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface within a 6.5-mile (reduced from a 7.2-mile) radius of Hugoton Municipal Airport, Hugoton, KS; removing the Hugoton NDB and associated extension from the airspace legal description; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review as part of the decommissioning of the Hugoton NDB which provided navigation information for the instrument procedures this airport.

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 FAA Order JO 7400.11.

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 will only affect air traffic procedures and air navigation, it is certified that this rule, when

promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 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 KS E5 Hugoton, KS [Amended]

Hugoton Municipal Airport, KS
(Lat. 37°09'48" N, long. 101°22'14" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Hugoton Municipal Airport.

Issued in Fort Worth, Texas, on February 28, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–04457 Filed 3–2–22; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

[File No. R207009]

16 CFR Part 4

Petition for Rulemaking of Institute for Policy Integrity

AGENCY: Federal Trade Commission.

ACTION: Receipt of petition; request for comment.

SUMMARY: Please take notice that the Federal Trade Commission (“Commission”) received a petition for rulemaking from NetChoice, Americans for Prosperity, Hispanic Leadership Fund, Innovation Economy Institute, Institute for Policy Innovation, James Madison Institute, National Taxpayers Union, R Street Institute, and Young Voices, and has published that petition online at <https://www.regulations.gov>. This petition requests that the Commission’s current rule regarding disqualification of Commissioners be amended to also apply to enforcement proceedings and include specific procedures on time to respond to petitions, review by the FTC Ethics Official and the Commissioners, and standards for determining recusal. The Commission invites written comments concerning the petition. Publication of this petition is pursuant to the Commission’s Rules of Practice and Procedure and does not affect the legal status of the petition or its final disposition.

DATES: Comments must identify the petition docket number and be filed by April 4, 2022.

ADDRESSES: You may view the petition, identified by docket number FTC–2022–0005, and submit written comments concerning its merits by using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit sensitive or confidential information. You may read background documents or comments received at <https://www.regulations.gov> at any time.

FOR FURTHER INFORMATION CONTACT: Daniel Freer (phone: 202–326–2663, email: dfreer@ftc.gov), Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18(a)(1)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(1)(B), and FTC Rule 1.31(f), 16 CFR 1.31(f), notice is hereby given that the above-captioned petition has been filed with the Secretary of the Commission and has been placed on the public record for a period of thirty (30) days.

Any person may submit comments in support of or in opposition to the petition. All timely and responsive comments submitted in connection with this petition will become part of the public record.

The Commission will not consider the petition’s merits until after the comment period closes. It may grant or deny the petition in whole or in part, and it may deem the petition insufficient to warrant commencement of a rulemaking proceeding. The purpose of this document is to facilitate public comment on the petition to aid the Commission in determining what, if any, action to take regarding the request contained in the petition. This document is not intended to start, stop, cancel, or otherwise affect rulemaking proceedings in any way.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2).

Authority: 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 601 note.

April J. Tabor,
Secretary.

[FR Doc. 2022–04489 Filed 3–2–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

31 CFR Part 223

RIN 1530–AA20

Surety Companies Doing Business With the United States

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Department of the Treasury, Bureau of the Fiscal Service (Treasury) administers the corporate Federal surety bond program (the program). Treasury issues certificates of authority to qualified sureties to underwrite and reinsure Federal surety bond obligations. Treasury also recognizes qualified companies as admitted reinsurers who can provide reinsurance to certified companies except on Federal surety bonds. Treasury recognizes an admitted reinsurer for the purpose of providing credit to a surety for non-Federal obligations ceded to an admitted reinsurer when valuing the assets and liabilities of a surety for Treasury certificate purposes, as appropriate. Treasury is proposing to amend its regulations to allow for recognition of additional companies as reinsurers that are excluded under the current regulations. Additionally, Treasury proposes to amend its regulations to incorporate requirements for surety companies to submit information that Treasury uses to perform financial analysis of these companies, which was previously published in supplemental guidance documents. Treasury also proposes a reorganization of the existing regulations to modernize and improve their structure.

DATES: Submit written comments on or before May 2, 2022.

ADDRESSES: You may submit comments, identified by docket number FISCAL–2021–0006, using the following methods:

- *Federal eRulemaking Portal:* (<https://www.regulations.gov>). Follow the instructions on the website for submitting comments.

- *Mail:* Surety Bond Branch, Bureau of the Fiscal Service, 200 Third Street, Room 110, Parkersburg, WV 26106.

Instructions: All submissions received must refer to Fiscal Service and docket number FISCAL–2021–0006. In general, comments received will be published on www.regulations.gov without change, including any business or personal information provided. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Melvin Saunders, at melvin.saunders@fiscal.treasury.gov or 304–480–5108; Bobbi McDonald, bobbi.mcdonald@fiscal.treasury.gov or 304–480–7098; or

David Crowe at david.crowe@fiscal.treasury.gov or 304–480–8971.

SUPPLEMENTARY INFORMATION:

I. Background

Treasury’s Bureau of the Fiscal Service is responsible for administering the corporate Federal surety bond program under the authority of 31 U.S.C. 9304–9308 and 31 CFR part 223 (part 223). Treasury publishes supplemental guidance on its requirements in annual letters posted to its website. Congress delegated to Treasury the discretion to issue a certificate of authority to a surety company if Treasury determines that: The surety’s articles of incorporation authorize it to engage in the business of surety; the company has the requisite paid-up capital, cash, or equivalent assets; and the company is able to carry out its contracts. Treasury issues a certificate of authority to companies (“certified sureties”) to write or reinsure Federal surety bonds. Additionally, Treasury recognizes certain companies as admitted reinsurers, *i.e.*, companies permitted by Treasury to provide reinsurance to the certified sureties except on excess risks that run to the United States. Treasury publishes annual lists of companies holding a certificate of authority and of companies recognized as admitted reinsurers.

Treasury published a Request for Information (RFI) on December 30, 2019.¹ The RFI sought input from the public on a variety of topics relating to Treasury’s evaluation of surety companies, as well as the operations of the corporate Federal surety bond program. These topics included, among other things, Treasury’s financial analysis methodology, its rules regarding credit for reinsurance, and the documentation it requires to perform its review of companies seeking designation and renewal as certified sureties or admitted reinsurers. The RFI closed for comments on February 13, 2020. The comments received informed, in part, Treasury’s decision to develop and propose this rulemaking.

The Bureau of the Fiscal Service coordinated closely with Treasury’s Federal Insurance Office in developing both the RFI and the following proposed regulations.

A. Reinsurance

Since the earliest days of the surety program, Treasury considered an evaluation of reinsurance to be an important part of its review and analysis of surety companies’ abilities to carry out their contracts. Treasury Circular

105, dated December 22, 1906, instituted a limitation on surety companies that prevented them from underwriting any risk in excess of 10 percent of their paid-up capital and surplus unless the amount exceeding the 10 percent limitation was secured by “reinsurance to the satisfaction of this Department.” This allowance for companies with satisfactory reinsurance applied only to risks running to parties other than the United States government; companies were not permitted to underwrite any Federal risk in excess of the 10 percent limitation.

As Treasury’s regulatory requirements for surety companies became more thorough, so too did the requirements regarding reinsurance. Treasury added a requirement in 1922 that such companies providing reinsurance file financial statements with Treasury annually. In addition to its list of certified surety companies, Treasury began publishing different lists of acceptable reinsurance companies, specifying which companies could reinsure Federal risks.

The limitation of risk, and the protection required when a risk runs to the United States, endures in part 223 today. Sections 223.10 and 223.11 specify the 10 percent limitation (now referred to as the underwriting limitation) and the available methods of protecting risk in excess of that limitation. The regulations also require surety companies to submit quarterly schedules showing their risks in excess of the limitation and describing the protective methods they have taken to cover their excess risks. A surety company may only use a company holding a certificate of authority from Treasury to reinsure risks in excess of its underwriting limitation where the United States is the obligee. For a Treasury-certified surety to receive credit for an excess risk on a non-Federal bond ceded to a reinsurer, the excess risk must be reinsured either by another certified surety, or by an admitted reinsurer.

Treasury examines a surety company’s reinsurance to determine compliance with the underwriting limitation provisions of part 223, and as part of Treasury’s analysis of whether the company is solvent and able to carry out its contracts. The provision at 31 CFR 223.9 states that Treasury may value the assets and liabilities of companies in its discretion, and notes that credit for reinsurance will be allowed to the surety company if the reinsurer holds a certificate of authority from Treasury or is recognized by Treasury as an admitted reinsurer.

¹ 84 FR 72138.

Additionally, Treasury allows credit for reinsurance ceded to recognized pools or secured by trust accounts in certain circumstances. For the surety company to receive credit for any other reinsurance, Treasury requires the reinsurer's liability to be secured with approved collateral.

Treasury has not significantly updated the requirements regarding reinsurance in part 223 in many years. In that time, various changes have taken place in the regulation of insurance that affect the companies applying to Treasury for a certificate of authority or renewal of their certificate. These include the completion and entry into force of the Covered Agreements with the European Union and the United Kingdom, providing for (among other things) the elimination of collateral requirements, under specified conditions, for reinsurers from those jurisdictions assuming business from United States ceding insurers. Relatedly, in 2011 and 2019, the National Association of Insurance Commissioners (NAIC) adopted significant amendments to its Credit for Reinsurance Model Law and Model Regulation. These amendments allow for United States reinsurers ceding reinsurance to certain foreign reinsurers to receive credit for the ceded reinsurance with reduced or eliminated collateral requirements. While these developments do not directly require changes to the regulations in part 223, surety companies have experienced increased difficulty in complying with Treasury's requirements for collateral while also complying with their state of domicile regulations and reducing collateral previously used to secure non-U.S. reinsurance.

B. Financial Analysis

Prior to 1977, Treasury's regulations outlined requirements for how it evaluated surety companies' financial statements, valued assets and liabilities, reviewed investments, and performed its financial analysis. In 1977, Treasury's approach changed. Treasury decided it would only publish high-level requirements in its regulations and, moving forward, would provide the more specific guidance regarding its financial analysis in its annual letters or other guidance. Since then, the letters have been issued on an annual basis, and modified from time-to-time, to respond to program needs or to developments in the insurance industry, as appropriate.

Over time, Treasury's annual letters have therefore become the primary source for companies seeking information on the surety bond program

and the process for becoming certified or admitted to the program. Treasury intends to amend its regulations to include the more detailed information related to its financial analysis of surety companies previously published in the annual letters.

Treasury would like to provide companies, trade associations, and other members of the public the opportunity to formally comment on the proposed changes to the financial analysis and credit for reinsurance requirements in the surety bond regulations.

II. Treasury's Proposed Changes

Treasury proposes to update part 223 in three respects:

1. Update 31 CFR 223.9, 223.11, 223.12, and 223.22 to add two new categories of reinsurers eligible for recognition: Complementary reinsurers and alien reinsurers.

2. Update 31 CFR 223.9 to provide more detail, previously provided in the program's guidance, as to how Treasury conducts its financial analysis of surety companies, including the valuation of assets and liabilities.

3. Make updates to 31 CFR 223.1, 223.2, 223.3, 223.4, 223.5, 223.6, 223.7, 223.8, 223.9, 223.10, 223.11, 223.12, 223.13, 223.14, 223.15, 223.16, 223.17, 223.18, 223.19, 223.20, 223.21, and 223.22. These changes mostly reflect Treasury's effort to reorganize part 223 and to ensure it includes more detailed information for companies applying for a certificate of authority or recognition as an admitted reinsurer, or renewal thereof. As a part of this reorganization, §§ 223.4, 223.6, 223.13, and 223.14 will be reserved. These changes also include technical revisions, such as updating terminology and website addresses. Additionally, some of these changes clarify longstanding Treasury policies that may have been unclear in the current regulations or in the annual letters.

A. New Categories of Recognized Reinsurance Companies

Treasury proposes to add two new categories of companies that can receive recognition from Treasury, provided they apply for recognition and meet Treasury's requirements. The first would be known as complementary reinsurers. Complementary reinsurers must be based in a non-U.S. jurisdiction that is subject to an in-force Covered Agreement addressing the elimination, under specified conditions, of collateral requirements and must meet other requirements defined in the proposed regulations. Certified sureties ceding reinsurance to companies recognized as complementary reinsurers would

receive credit for the ceded reinsurance without it being secured by collateral. The second category would be known as alien reinsurers. These companies must be based in a jurisdiction that the NAIC recognizes as a Qualified Jurisdiction or a Reciprocal Jurisdiction, provided that the Reciprocal Jurisdiction is not party to an in-force Covered Agreement. These companies must also meet other requirements defined specifically in the proposed regulations. Certified sureties ceding reinsurance to companies recognized as alien reinsurers would be eligible to receive credit for the ceded reinsurance to the extent allowed by the ceding company's state of domicile.

In addition to receiving credit for reinsurance ceded to complementary or alien reinsurers, certified sureties could rely on complementary reinsurers or alien reinsurers to reinsure excess risks not running to the United States.

Treasury believes these new categories of reinsurers reflect, and are informed by, developments and risk management practices that have occurred or been implemented internationally or at the state level since it last significantly updated its requirements. Treasury's current collateral requirements were imposed due to the importance to the Federal Government of ensuring that certified sureties have reliable reinsurance. While it remains essential that those companies providing reinsurance to certified sureties be steadfast in their ability and willingness to pay when called upon, Treasury has determined that a risk-based approach (rather than an approach strictly favoring U.S.-based reinsurers) to credit for reinsurance and collateral requirements provides sufficient protection to the Federal Government. Some insurance trade associations and companies responding to Treasury's RFI pointed out that there have not been adverse effects for United States ceding insurers (or their policyholders) since the U.S. states began implementing revised NAIC model law and regulation provisions allowing reduced collateral for some non-U.S. reinsurance in 2011. Supporting this assertion, one company pointed to data from the NAIC showing that there has not been an increase in the amount of uncollectible reinsurance in the United States since 2010. The changes that have taken place in the regulation of reinsurance collateral at the state level demonstrate that it is appropriate to evaluate reinsurance companies based on the financial strength and market conduct of the companies themselves, provided they are from jurisdictions with sufficient prudential and market conduct

regulatory regimes. There is thus little increased risk to the Federal Government of allowing Treasury-certified sureties to cede reinsurance to companies from these jurisdictions with reduced or eliminated collateral that satisfy the qualifications specified in the revised rule. Treasury's proposed changes will still ensure that companies able and willing to pay when called upon will be recognized as being able to provide reinsurance for certified surety companies, but the proposed regulations acknowledge that limiting recognition to only United States domiciled companies (and requiring 100 percent collateral from all other reinsurers) is no longer the best way to do so.

Treasury's current collateral requirements and local presence requirements are not in alignment with industry trends and no longer provide sufficient benefit to the Federal Government to justify their restrictiveness. Many companies and insurance trade associations responding to the RFI stated that companies have had difficulty complying with Treasury's continued imposition of 100% collateral requirements on ceding companies' non-U.S. reinsurance, even as the ceding companies' state regulators began modernizing risk-based collateral requirements. Treasury has long considered an evaluation of a surety company's entire portfolio of reinsurance, not just the reinsurance used to protect Federal risks, to be critical to its analysis of the surety's solvency and ability to carry out its contracts. Thus, Treasury's current requirements essentially give sureties the choice of reserving capital as collateral to comply with its requirements or reducing collateral (as allowed by their state regulator) with attendant risk of losing their Treasury-certified status. Accordingly, Treasury's proposal to recognize these two new categories of reinsurers will ease the regulatory and financial burden on certified surety companies without significantly increasing the financial risk to the Federal Government.

B. Update to Financial Analysis Methodology

Treasury proposes amending 31 CFR 223.9 to describe in greater detail the type of financial analysis it performs and incorporate certain requirements regarding the valuation of companies' assets and liabilities, credit for reinsurance, financial ratios, and other aspects of the financial analysis. These revisions to 31 CFR 223.9 reflect requirements previously published in the annual letters and supplemental guidance. Treasury expects that

publishing these requirements will give companies greater clarity as to Treasury's requirements and policies moving forward.

C. Reorganization of Part 223 and Other Changes

As part of its effort to update and modernize the surety regulations, Treasury proposes a reorganization of the provisions contained in part 223. Current part 223's structure is largely unchanged since it was originally codified into the Code of Federal Regulations from Treasury circulars. The current part 223 has similar requirements, such as baseline eligibility requirements for obtaining a certificate of authority, scattered across sections. A company seeking information about the requirements for applying for a certificate of authority would need to review at least five different sections in current part 223 as well as guidance on the surety program's website, for example. Treasury proposes reorganizing part 223 to group similar or related requirements together and to make the sections of part 223 flow in a more logical order. Under these revisions, part 223 would list the requirements for an application for a certificate of authority in one section. This proposed reorganization moves requirements in part 223 without substantive change. These changes would also add to part 223 some existing guidance and instructions from the program's website, ensuring that part 223 could be the primary source of information for companies seeking information about the program's requirements.

Treasury also proposes changes throughout part 223 that are mostly technical in nature. These changes include updating organizational references, contact addresses, and website addresses, and updating terminology that may be outdated or confusing. Finally, some of the changes clarify or state longstanding Treasury policies that may have been unclear or unstated in the current part 223, the annual letters, or elsewhere on the program's website.

One such change concerns Treasury's policy that any company engaged in only insuring or reinsuring business of its parent, affiliated, or controlled unaffiliated business is not eligible to obtain a certificate of authority or recognition as a reinsurer. Such companies have historically not been able to provide Treasury with the financial documentation it requires to ensure that they are solvent and able to carry out their contracts. The proposed

regulations would codify this longstanding policy.

Another change concerns Treasury's issuance of certificates of authority to certain reinsurers. Treasury historically has allowed companies to apply for certificates of authority to act only as reinsurers on Federal surety bonds, provided that such reinsurers meet all of the requirements of certified surety companies, including the statutory requirements that the reinsurers be incorporated in the United States and submit quarterly financial reports. Because Treasury has historically required the reinsurers seeking a certificate of authority to comply with all of the requirements, including the statutory requirements, applicable to other certified companies, Treasury intends to amend its regulations to codify its longstanding interpretation that certificate-holding reinsurers must meet the requirements of the surety statutes.

III. Section by Section Analysis

Section 223.1

Current § 223.1 provides information about the scope of the regulations regarding the issuance, renewal, and revocation of certificates of authority. Proposed § 223.1 adds a baseline requirement to be eligible for a certificate of authority, that a company that exists primarily to insure or reinsure business of its parent, affiliated company, or controlled unaffiliated business, is not eligible for a certificate of authority.

Section 223.2

Current § 223.2 provides information as to how a company can apply for a certificate of authority. Proposed § 223.2 provides an overview of the information Treasury requires in an application package for a new certificate of authority or renewal of an existing certificate of authority.

Section 223.3

Current § 223.3 discusses the criteria for the issuance of a certificate of authority. Proposed § 223.3 adjusts the timing of the annual renewal of certificates of authority, from July to August. Proposed § 223.3 would also codify Treasury's longstanding interpretation, in view of the statutory requirement that companies underwriting Federal surety bonds must be incorporated in the United States, that only companies incorporated in the United States can obtain a certificate of authority as a reinsuring company on Federal bonds. Finally, proposed § 223.3

updates unclear terminology and phrasing throughout.

Section 223.4

We propose moving the requirement in existing § 223.4 to § 223.2 as a requirement for applicants for certificates of authority. Section 223.4 will be reserved.

Section 223.5

Current § 223.5(a) requires that companies applying for authority to write surety bonds must be actively engaged in surety business. We propose moving this requirement to § 223.1 as a baseline eligibility requirement, with a modification that it applies to companies engaged in the business of writing fidelity contracts as well as surety contracts. Proposed § 223.5 also updates the list of U.S. territories where sureties may be licensed.

Section 223.6

We propose that § 223.6 be reserved, as the current provision is superfluous.

Section 223.7

Current § 223.7 contains a requirement regarding the investments of companies seeking or holding a certificate of authority. We propose moving this requirement to § 223.9(a), as it is a requirement regarding the assets on a company's financial statements. Proposed § 223.7 would now codify provisions from the program's annual guidance regarding instances where companies must notify Treasury of changes that may have a significant impact on the companies' financial statements or solvency.

Section 223.8

Current § 223.8 requires that companies holding a certificate of authority must submit annual and quarterly financial statements on the forms utilized by the NAIC. We propose moving some of existing § 223.8 to § 223.2 as an application requirement. Proposed § 223.8 contains more detailed information regarding certified companies' quarterly reporting requirements.

Section 223.9

Current § 223.9 states that Treasury may value the assets and liabilities of companies in its discretion. It states that credit for reinsurance will be granted for business ceded to other certified companies or admitted reinsurers. Proposed § 223.9 would be retitled "Determination of financial condition and other required information" and provides greater detail into how Treasury conducts its financial analysis

than is currently provided in § 223.9. Treasury will still issue supplemental guidance as needed, but proposed § 223.9 would become the primary source for information as to Treasury's current requirements regarding admissibility of assets, treatment of securities and investments, ratios, financial trends, and other important items from a company's financial statements. These changes to § 223.9 largely reflect policies that have been published for many years in Treasury's annual letter. Proposed § 223.9 also highlights the changes to Treasury's approach to credit for reinsurance, in allowing credit for the two new categories of recognized reinsurers (in addition to admitted reinsurers) discussed in proposed § 223.12, below.

Section 223.10

Current § 223.10 defines the limitation of risk, known as the underwriting limitation. Proposed § 223.10 would also contain a requirement moved from § 223.13 regarding how Treasury determines the underwriting limitation. Proposed § 223.10 also clarifies Treasury's definition of the term "single risk."

Section 223.11

Current § 223.11(b) provides the requirements for how a surety company can use reinsurance to protect excess risks. Proposed § 223.11(b) is updated to note that excess risks not running to the United States can be protected by the recognized reinsurers in proposed § 223.12, below. Proposed § 223.11(b) updates form titles and terminology. Proposed § 223.11(c) codifies in regulation a longstanding Treasury policy previously published in the annual letters that collateral used to secure amounts in excess of a company's underwriting limitation cannot also be used to secure reinsurance not authorized by Treasury to obtain credit for reinsurance under § 223.9. Proposed § 223.11 also breaks out and renumbers the paragraphs in § 223.11(b) for ease of reading and clarity. Proposed § 223.11 also updates unclear language and terminology throughout.

Section 223.12

Section 223.12 establishes the application requirements and standards for a company to be recognized by Treasury as an admitted reinsurer for surety companies doing business with the United States. Proposed § 223.12 maintains the standards for recognition as an admitted reinsurer, while clarifying some existing terminology and adding the timeframe for

applications. Proposed § 223.12 adds two new categories of reinsurers eligible for recognition: Complementary reinsurers and alien reinsurers.

To obtain recognition as a complementary reinsurer, a company must be from a non-U.S. jurisdiction that is subject to an in-force Covered Agreement. The company must also be recognized by at least one U.S. state as a Reciprocal Jurisdiction Reinsurer, as defined by the NAIC Credit for Reinsurance Model Law and Model Regulation.

To obtain recognition as an alien reinsurer, a company must be from a non-U.S. jurisdiction that is recognized by the NAIC as a Qualified Jurisdiction or as a Reciprocal Jurisdiction, provided the Reciprocal Jurisdiction is not party to an in-force Covered Agreement. The company must also be recognized by at least one state as a Certified Reinsurer or Reciprocal Jurisdiction Reinsurer, as those terms are defined by the NAIC, to obtain recognition by Treasury as an alien reinsurer. Proposed § 223.12, taken in concert with proposed § 223.11, would thus allow a certified surety to rely on one or more admitted reinsurers, complementary reinsurers, and/or alien reinsurers to provide reinsurance for the surety's excess risks not running to the United States, in addition to the other acceptable methods already described in § 223.11. Additionally, proposed § 223.12, in concert with proposed § 223.9, would recognize that certified surety companies may obtain credit for reinsurance for amounts ceded to other certified companies, admitted reinsurers, complementary reinsurers, or alien reinsurers. Under current §§ 223.12 and 223.9, amounts ceded to other certified companies and admitted reinsurers are eligible for full credit without the posting of collateral. Under proposed § 223.12, in concert with Proposed § 223.9, amounts ceded to complementary reinsurers would also be eligible for full credit without the posting of collateral, provided the amounts were ceded after the complementary reinsurer has been recognized by at least one U.S. state regulator as a Reciprocal Jurisdiction Reinsurer from a jurisdiction that is subject to an in-force Covered Agreement. Under proposed §§ 223.12 and 223.9, amounts ceded to alien reinsurers would be eligible for credit to the extent such credit is authorized by the surety's state of domicile regulator. Because some alien reinsurers may be eligible for full credit for reinsurance under state law, proposed § 223.12 would also allow amounts ceded to those reinsurers to be eligible for full credit without the posting of collateral.

In reviewing applications for recognition as an alien reinsurer (or renewal of such recognition), Treasury will consider all relevant financial data to determine if it is appropriate to grant credit for reinsurance to the full extent allowed by the ceding company's state of domicile. Additionally, proposed § 223.9 contains a provision that states that if Treasury determines that either the alien reinsurer or the certified surety may be unable to carry out its obligations, Treasury may require additional collateral for ceding companies to receive credit for reinsurance to the extent allowed by the state.

Proposed § 223.12 also codifies Treasury's policy that companies that exist to only reinsure business of their parent, affiliated, or controlled unaffiliated business are not eligible for recognition as a reinsurer under the program.

Section 223.13

Current § 223.13 requires that when applying a certified surety company underwriting limitation, the full penalty of the obligation will be regarded as the liability, and lists exceptions to that general rule. We propose moving this requirement to § 223.10 to group requirements regarding the underwriting limitation together in the same section. We propose reserving this section.

Section 223.14

Current § 223.14 requires certified surety companies to report to Treasury on their excess risks and protective measures taken. We propose moving this requirement to § 223.8 so it is grouped with other ongoing, quarterly reporting requirements for certified companies. We propose reserving this section.

Section 223.15

Section 223.15 explains how Treasury determines a company's paid-up capital and surplus. Proposed § 223.15 clarifies that this provision applies to companies holding or seeking a certificate of authority or to companies recognized or seeking to be recognized as admitted reinsurers.

Section 223.16

Section 223.16 describes Treasury's list of companies holding certificates of authority. Proposed § 223.16 updates terminology and website addresses, and also changes the publication date of the list from July to August.

Section 223.17

Section 223.17 describes the circumstances under which an agency official can decline to accept a bond underwritten by a certified surety. Proposed § 223.17 updates unclear language.

Section 223.18

Section 223.18 describes the ways in which Treasury may initiate revocation proceedings against a certified company. Proposed § 223.18 updates some phrasing to enhance clarity.

Section 223.19

Section 223.19 describes Treasury-initiated revocation proceedings. Proposed § 223.19 updates some phrasing to enhance clarity.

Section 223.20

Section 223.20 describes agency-initiated revocation proceedings. Proposed § 223.20 updates unclear phrasing in § 223.20(b)(1) and (h)(8). Proposed § 223.20 also updates section 223.20(h)(9) by removing references to the Treasury Financial Manual and the Annual Letter to Executive Heads of Surety Companies.

Section 223.21

Section 223.21 describes how a company may become reinstated after non-renewal or revocation of its certificate of authority. Proposed § 223.21 updates unclear language and codifies Treasury's practice of allowing a waiver of the one-year waiting period in limited instances where a company demonstrates exigent circumstances that warrant such a waiver.

Section 223.22

Section 223.22 describes the categories of fees that Treasury charges companies applying for certification or recognition, or renewal of their status. Proposed § 223.22 adds that fees will be charged for new applications and applications for renewal of recognition as a complementary or alien reinsurer.

DISTRIBUTION CHART FOR REVISED PART 223

Old section	New section
223.3(a)(1)(i)	223.2(a)(3) and (a)(8).
223.4	223.2(a)(10).
223.5(a)	223.1(b).
223.6	Removed.
223.7	223.9(a)(1).
223.8(a)	223.2(a)(8), 223.2(b)(4).
223.8(b)	223.8(a)(5).
223.13	223.10(b).
223.14	223.8(a)(2).

IV. Procedural Analysis

Request for Comment

Treasury welcomes comments on all aspects of this proposed rulemaking, but particularly on the specific questions below:

1. Does Treasury's proposal to recognize two new classes of reinsurers benefit the surety industry without significantly increasing risks?
2. Should Treasury consider alternative approaches to credit for reinsurance than those proposed in §§ 223.9, 223.11, and 223.12?
3. In §§ 223.2, 223.7, 223.8, and 223.9, Treasury proposes publishing, without substantive change, several requirements that have been previously contained in annual guidance or on the surety program's website. Should Treasury consider modifying these regulations or not codifying them in the regulations?
4. Does the proposed reorganization of part 223 make the regulations clearer and easier to follow, and would additional changes more effectively accomplish this goal?
5. Are there additional changes Treasury should consider to better help the surety program accomplish its mission of evaluating and approving surety companies to do business with the United States?

Regulatory Planning and Review

The proposed rule does not meet the criteria for a "significant" regulatory action under Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed changes allowing for recognition of additional reinsurance companies would not increase any regulatory burden or have an economic impact on small entities. The proposed rule adopts criteria for recognition outlined in the Covered Agreements and in the NAIC Credit for Reinsurance Model Law. Accordingly, by the time these proposed rules are published and become effective, reinsurance companies from relevant non-U.S. jurisdictions seeking to assume business from U.S. ceding insurers will already be complying with similar financial requirements. Additionally, adherence to these requirements is only required for companies seeking recognition by Treasury; participation in the program is voluntary. The proposed rule changes

regarding Treasury's financial analysis mainly codify existing requirements and policies of which Treasury-certified sureties were already aware. Therefore, this proposed rule will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to prepare budgetary impact statements before promulgating any rule likely to result in a Federal mandate 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 in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. This proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, Treasury has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Act) requires that collections of information prescribed in the proposed rules be submitted to the Office of Management and Budget (OMB) for review and approval.² In accordance with that requirement, Treasury has submitted the collection of information contained in this notice of proposed rulemaking for review. Under the Act, 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. Comments on the collection of information may be submitted electronically to oir.submission@omb.eop.gov, or may be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, DC 20503; and to the Surety Bond Branch, Bureau of the Fiscal Service, at the address specified at the beginning of this document.

The collection of information in the proposed amendments is contained in proposed § 223.12(i) and (j). The proposed amendments require

companies applying for initial recognition as a complementary reinsurer to submit to Treasury all information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the two most recently completed calendar years. For renewal of such recognition, companies will submit all semi-annual and annual filing information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the most recently completed calendar year. Companies applying for initial recognition as an alien reinsurer will submit to Treasury all information provided to any U.S. state regulator in the two most recently completed calendar years. For renewal of such recognition, companies will submit all annual filing information provided to any U.S. state regulator in the most recently completed calendar year.

Treasury invites further comments on: (1) Whether the proposed collection of information is necessary for the proper performance of Treasury's functions, including whether the information has practical utility; (2) the accuracy of Treasury's estimate of the burden; (3) enhancement of the quality, utility, and clarity of information to be collected; and (4) minimizing the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology.

Estimated total annual reporting burden: 400 hours.

Estimated annual number of respondents: 100.

Estimated annual frequency of response: 1.

Proposed Regulations

List of Subjects in 31 CFR Part 223

Financial analysis, Reinsurance, Surety bonds.

For the reasons set forth in the preamble, we propose to amend 31 CFR part 223 as set forth below:

PART 223—SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 9304–9308.

■ 2. Revise § 223.1 to read as follows:

§ 223.1 Certificate of authority.

(a) The regulations in this part govern the issuance, renewal, and revocation by the Secretary of the Treasury, acting

through the U.S. Department of the Treasury, Bureau of the Fiscal Service (Treasury), of certificates of authority to bonding companies to do business with the United States as sureties on, or reinsurers of, Federal surety bonds (hereinafter “bonds” or “obligations”) under the authority of 31 U.S.C. 9304–9308 and this part, and the acceptance of such obligations.

(b) A company applying for authority to write surety bonds in favor of the United States must be engaged in the business of writing surety or fidelity contracts at the time of its application to Treasury, whether or not also making contracts in other classes of insurance, but shall not be engaged in any type or class of business not authorized by its charter or the laws of the state in which the company is incorporated. It must be the intention of the company to engage actively in the execution of surety bonds or fidelity contracts in favor of the United States.

(c) A company is not eligible for a certificate of authority if it only insures or reinsures risks of its parent, affiliated, or controlled unaffiliated business, or is deemed by Treasury to be primarily engaged in self-insurance.

■ 3. Revise § 223.2 to read as follows:

§ 223.2 Application for certificate of authority.

(a) *Application for issuance of certificate of authority.* Every company not currently holding a certificate of authority wishing to apply for a certificate of authority shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company shall file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(1) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22;

(2) A written request for a certificate of authority, signed by an officer of the company. This request must indicate:

(i) Whether the company has previously applied for a certificate of authority from Treasury and, if so, the date of the previous application; and

(ii) Whether Treasury has ever previously issued the company a certificate of authority, the reason for termination of its certificate of authority, and the applicable dates;

(3) A certified copy of its charter or articles of incorporation showing that it is duly authorized to conduct the business referenced under 31 U.S.C. 9304(a)(2) and a statement from an officer of the company certifying that:

² 44 U.S.C. 3507(d).

(i) The company is authorized to transact surety business; and
 (ii) If granted a certificate of authority, there are no restrictions upon the company preventing it from being able to execute and guarantee bonds and undertakings in judicial proceedings, and guarantee contracts to which the United States is a party;

(4) A listing of the names of the company's current officers and directors as of the date of application, including a biographical affidavit of each officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(5) A memorandum setting forth:

(i) A comprehensive statement of the company's method of operation, including, but not limited to, underwriting guidelines, claims adjustment procedures, reinsurance philosophy, and control over collateral;

(ii) The classes of business in which it engages;

(iii) Any special underwriting agreements, management agreements, or pooling agreements in force. Copies of agreements must be included with the memorandum; and

(iv) Present plans of the company as to the types of Federal bonds it intends to write, the anticipated annual premium volume of the Federal bonds, and the geographical areas in which it intends to write the Federal bonds;

(6) A certified copy of a license from its state of incorporation and a completed Surety License Form (Form No. FS 2208);

(7) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(8) A statement of its financial condition, as of the close of the last two years preceding the date of application, on the annual statement form of the National Association of Insurance Commissioners (hereinafter referred to in this part as NAIC) with all Schedules and Exhibits completed, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The annual financial statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(9) The Insurance Regulatory Information System (hereinafter referred to in this part as IRIS) ratio results, and an explanation for any ratios outside the

normal ranges as established by the NAIC for the last two years preceding the date of application;

(10) A written statement signed by the Insurance Commissioner or other proper financial officer of any state attesting that the company maintains on deposit legal investments having a current market value of not less than \$100,000 for the protection of claimants, including all of its policyholders in the U.S.;

(11) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) for the last two years preceding the date of application;

(12) Copies of all reinsurance treaties currently in force along with a completed Summary of Reinsurance Treaties, per instructions provided online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(13) A completed Schedule of Excess Risks form (Form No. FS 285-A) as of the date of the application;

(14) A Statement of Actuarial Opinion as of the close of the last two years preceding the date of application provided by an independent qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC; and

(15) Such other evidence as Treasury may request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts. Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (a)(1) through (14) of this section.

(b) *Applications for renewal of certificate of authority.* Every company wishing to apply for the annual renewal of its certificate of authority shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company shall file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(1) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22;

(2) A completed Surety License Form (Form No. FS 2208) and a certified copy of the licenses from any states indicated on the Surety License Form that were not indicated on the company's most recent form;

(3) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses

to any significant findings or recommendations;

(4) A statement of its financial condition, as of the close of the preceding year, on the annual statement form of the NAIC with all Schedules and Exhibits completed, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(5) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC, as of the close of the preceding year;

(6) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) as of the close of the preceding year;

(7) A completed Schedule of Excess Risks form (Form No. FS 285-A) as of the close of the preceding year;

(8) A Statement of Actuarial Opinion as of the close of the preceding year provided by an independent qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC;

(9) A listing of the names of the company's current officers and directors as of the close of the preceding year, including a biographical affidavit of any new officer and director for whom a biographical affidavit was not previously provided, per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(10) A Report of Federal Business Written/or Assumed and Outstanding as of the close of the preceding year, per instructions provided online at <https://www.fiscal.treasury.gov/surety-bonds/>; and

(11) Such other evidence as Treasury may request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts. Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (b)(1) through (10) of this section.

■ 4. Revise § 223.3 to read as follows:

§ 223.3 Issuance of certificates of authority.

(a) In determining whether to issue or renew a certificate of authority,

Treasury will evaluate the whole application package under § 223.2, the financial condition of the company as determined under § 223.9, the past history of the company, and any further evidence or information that Treasury may require the company to submit (at the company's expense).

(b) A certificate of authority will be effective for a term that expires on the last day of the next July. All such statutory requirements and regulatory requirements under this part are continuing obligations, and any certificate issued is expressly subject to continuing compliance with such requirements. The certificate of authority will be renewed annually on the first day of August, *provided* the company remains qualified under the law, the regulations in this part, and other pertinent Treasury requirements, *and* the company submits the fee required under § 223.22 by March 1st of each year.

(c) If a company meets the requirements for a certificate of authority as an acceptable surety on Federal bonds in all respects except it is limited to reinsure business only, it may be issued a certificate of authority as a reinsuring company on Federal bonds. The fees for initial application and renewal of a certificate as a reinsuring company will be the same as the fees for a certificate of authority as an acceptable surety on Federal bonds.

§ 223.4 [Removed and Reserved]

- 5. Remove and reserve § 223.4.
- 6. Revise § 223.5 to read as follows:

§ 223.5 Business.

A company holding a certificate of authority, or its agent, may only execute (sign or otherwise validate) a surety bond in favor of the United States in a state where it is licensed to do surety business. It need not be licensed in the state or other area in which the principal resides or where the contract is to be performed. The term *other area* includes the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

§ 223.6 [Removed and Reserved]

- 7. Remove and reserve § 223.6.
- 8. Revise § 223.7 to read as follows:

§ 223.7 Notification of changes.

(a) Every company certified under this part or recognized as an admitted reinsurer pursuant to § 223.12(h) must notify Treasury of changes that have a significant impact on its financial statements or solvency. The following is not intended to be an exhaustive list of

all changes that Treasury may require to be reported and may evaluate as part of this analysis of the company. Treasury will publish supplemental guidance on additional information that may be required. Every company certified under this part or recognized as an admitted reinsurer pursuant to § 223.12(h) must notify Treasury of the following:

(1) *Capital changes.* Companies must forward to Treasury, when available, approvals by the insurance authorities of the company's lead state regulator when changes in paid-up capital or contributions/withdrawals to surplus have occurred;

(2) *Changes in stock ownership.* Stock insurance companies must provide a statement signed and sworn to by the Secretary or Assistant Secretary and by the Treasurer or Assistant Treasurer of the company each time any person (whether an individual, corporation, or organization of any kind) becomes owner of more than 5 percent of any class of outstanding stock issued by the company;

(3) *Mergers, transfer, assumption, and group/pool restructuring.* Companies must notify Treasury at least six months prior to any merger, consolidation, transfer, assumption, material group or pool restructuring, or name changes in which the reporting company is involved. The company must furnish to Treasury copies or agreements or documents pertaining to the same, as approved by the insurance authorities of the company's lead state regulator; and

(4) *Charters and bylaws amendments.* Whenever a company amends its charter or bylaws it must submit a certified copy of the amended charter or bylaws to Treasury.

(b) Noncompliance with this section may result in Treasury denying a company's application for its certificate of authority, its recognition as an admitted reinsurer, renewal of its certificate of authority, or in Treasury revoking a company's certificate of authority or recognition as an admitted reinsurer.

- 9. Revise § 223.8 to read as follows:

§ 223.8 Quarterly financial reporting requirements.

Every company certified under this part is required to file the following quarterly with Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>:

(a) A statement of its financial condition, as of the close of the preceding quarter, on the quarterly statement form of the NAIC with all Schedules and Exhibits completed,

showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The Quarterly Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(b) A completed Schedule of Excess Risks form (Form No. FS 285-A) as of the close of the preceding quarter;

(c) A Report of Federal Business Written/or Assumed and Outstanding as of the close of the preceding quarter, per instructions provided online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(d) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(e) A listing of the names of the company's current officers and directors as of the close of the preceding quarter, including a biographical affidavit of each new officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>; and

(f) Such other evidence as Treasury may request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts. Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (a) through (e) of this section along with the due dates for quarterly reporting.

- 10. Revise § 223.9 to read as follows:

§ 223.9 Determination of financial condition and other required information.

In determining the financial condition of every company applying for a certificate of authority or renewal of a certificate of authority under this part, Treasury will generally compute its assets and liabilities in accordance with paragraphs (a) through (f) of this section, provided that Treasury may exercise discretion in valuing the assets and liabilities of such companies. While paragraphs (a) through (f) of this section specify how Treasury will value certain classes of assets and liabilities and the analysis that Treasury will perform, they are not intended to be an exhaustive list of all assets and liabilities that Treasury may require to be reported and may evaluate as part of this analysis. Treasury will annually publish supplemental guidance on the

financial analysis performed by Treasury, including applicable ratios and acceptable ranges for ratios.

(a) *Assets*—(1) *General criteria for admissibility*. The cash capital and other funds included in the financial statement must be safely invested in accordance with the laws of the state in which it is incorporated. Admissible assets must be reported in U.S. Dollars and are generally limited to investments in cash, cash equivalents, short term investments, mortgage loans (within certain limits), and real property necessary for the conduct of a company's business. In cases where an investment (other than U.S. Government securities and securities of affiliates or subsidiaries) exceeds 10 percent of the total admitted assets, Treasury may require additional supporting documentation as needed on a case-by-case basis in order for the asset to be admissible. Additionally, Treasury considers normal account balances (such as, but not limited to, investment income due and accrued, agents' balances and premiums receivables, reinsurance recoverables on paid losses, and funds held by or deposited with ceding reinsuring companies) to be admissible provided they meet Treasury's standards. In order to be admissible, normal account balances may be evaluated for transactional substance, quality, and liquidity. Some assets that may be admissible under codification and/or certain state permitted practices may require supporting documentation as needed on a case-by-case basis in order to be admissible under Treasury's criteria. Assets resulting from reinsurance transactions must meet the credit for reinsurance standards listed under paragraph (c) of this section.

(2) *Securities*. Bonds, unaffiliated common stocks, and unaffiliated preferred stocks must be valued and reported in accordance with the NAIC's Accounting Practices and Procedures Manual (as updated or amended from time to time) and the NAIC Securities Valuation Office (SVO). Those with an investment grade designation will be admissible and those with a non-investment grade designation will be considered on a case-by-case basis.

(i) *All other securities*. The value of all other securities should be valued as of December 31 and reported in U.S. Dollars. For securities that do not have a SVO designation or have a SVO non-investment grade designation and are significant for Treasury purposes, Treasury may consider, if it deems appropriate, other relevant data (e.g., prospectus, marketability/liquidity information, internal investment

strategies/philosophies) and perform an analysis to determine whether the securities meet Treasury's criteria for admissibility.

(ii) *Securities of controlled companies*. Investments in subsidiaries, controlled entities, and affiliated entities must be reported in accordance with the NAIC Accounting Practices and Procedures Manual (as updated or amended from time to time).

(A) *Other insurance companies*. Companies owning securities of other insurance companies, which are under the same direction and control as the reporting company, must furnish copies of the NAIC File Upload of the subsidiaries. The assets of these subsidiaries will be analyzed according to the criteria set forth in this section.

(B) *Non-insurance companies*. Companies owning securities of non-insurance companies, which are under the same direction and control as the reporting company, must furnish copies of independently audited financial statements of such companies as of the reporting date.

(3) *Real estate and mortgages*. Only real estate essential to the operating needs of the company for conducting its business, and conventional first mortgage loans on unencumbered, improved, or productive real estate located within the United States, are admissible. These must be reported in accordance with the NAIC's Accounting Practices and Procedures Manual (as updated or amended from time to time). The real estate and mortgaged property must be supported by an appraisal report that includes the information and computations normally used in arriving at a competent appraised value. In instances where the aggregate values exceed 20 percent of the policyholders' surplus, Treasury may, if it deems appropriate, require additional supporting documentation.

(b) *Minimum bail reserve requirements*. Companies transacting surety bail business must submit a schedule showing bail premiums in force, bail liability, and the amount of any associated unearned premium reserve.

(c) *Reinsurance*. (1) Companies are required to submit Treasury Schedule F (Treasury Form No. TFS 6314) reflecting information in the company's annual statements. Credit for reinsurance may be taken for reinsurance in all classes of risk provided it is ceded to the following companies:

(i) Companies holding a current certificate of authority from Treasury;

(ii) Non-Treasury certified or recognized parents, subsidiaries, and/or affiliates if the parent, subsidiary, and/

or affiliate participate in a pooling agreement with the Treasury certified/recognized company and Treasury determines that the pool is financially solvent;

(iii) Admitted reinsurers as defined under § 223.12(h);

(iv) Complementary reinsurers as defined under § 223.12(i);

(v) Alien reinsurers as defined under § 223.12(j), up to the extent credit is given for reinsurance ceded to the alien reinsurer by the ceding company's state of domicile (subject to paragraph (c)(3) of this section); and

(vi) An instrumentality or agency of the United States that is permitted by Federal law or regulation to execute reinsurance contracts.

(2) Treasury will give credit for reinsurance not covered in paragraph (c)(1) of this section, to the extent of funds withheld or letters of credit or trust agreements from unauthorized companies, provided the company advises Treasury of the amount of funds held, letters of credit posted or funds secured in trust for each company. Treasury will also give credit for trust account assets associated with multi-beneficiary trust agreements established and maintained in the United States by overseas accredited or trustee reinsurers listed online at <https://www.fiscal.treasury.gov/surety-bonds/>, to the extent the unauthorized ceded business is covered by these trust account assets.

(3) If Treasury, after its review of the financial documentation submitted by an alien reinsurer recognized pursuant to § 223.12(j) and of the financial documentation submitted by the ceding company, determines that either company may be unable to carry out its obligations, Treasury may require additional collateral for the ceding company to receive credit for reinsurance to the extent credit is given for reinsurance ceded to the Alien Reinsurer by the ceding company's state of domicile.

(d) *Risk based capital (RBC)*. Treasury uses RBC in determining the financial solvency of companies, together with such companies' overall financial results, ratios, and trends. Companies must maintain RBC results that fall within acceptable ranges as established by the NAIC or provide a satisfactory explanation for results that do not.

(e) *Financial ratios*. Treasury uses the NAIC IRIS ratios to measure companies' solvency, profitability, and liquidity. Companies must maintain results for these ratios that fall within acceptable ranges as established by the NAIC or provide a satisfactory explanation for results that do not.

(f) *Financial results and trends.*

Treasury analyzes financial results from annual and quarterly financial statements required under this part for evidence of negative financial results or trends. Treasury may require companies to submit additional documentation or explanation regarding financial statements with evidence of negative financial results or trends such as decreasing policyholders' surplus, large underwriting losses, negative cashflows, or unsatisfactory IRIS ratio results.

(g) *Noncompliance.* Noncompliance with paragraphs (a) through (f) of this section may result in Treasury denying a company's application for its certificate of authority, or renewal of its certificate, or in Treasury revoking a company's certificate.

■ 11. Revise § 223.10 to read as follows:

§ 223.10 Limitation of risk.

(a) Except as provided in § 223.11, no company holding a certificate of authority shall underwrite any single risk on any bond or policy on behalf of any individual, firm, association, or corporation, whether or not the United States is interested as a party thereto, the amount of which is greater than 10 percent of the paid-up capital and surplus of such company, as determined by Treasury. Such figure is hereinafter referred to as the underwriting limitation. For purposes of this part, "single risk" is defined as the total risk under one bond or policy regardless of the number of individual risks under that bond or policy.

(b) In determining the underwriting limitation, the full penalty of any surety and fidelity obligation will be regarded as the liability, and no offset will be allowed on account of any estimate of risk that is less than such full penalty, except in the following cases:

(1) Appeal bonds; in which case the liability will be regarded as the amount of the judgment appealed from, plus 10 percent of said amount to cover interest and costs;

(2) Bonds of executors, administrators, trustees, guardians, and other fiduciaries, where the penalty of the bond or other obligation is fixed in excess of the estimated value of the estate; in which cases the estimated value of the estate, upon which the penalty of the bond was fixed, will be regarded as the liability;

(3) Indemnifying agreements executed by sole heirs or beneficiaries of an estate releasing the surety from liability;

(4) Contract bonds given in excess of the amount of the contract; in which cases the amount of the contract will be regarded as the liability; or

(5) Bonds for banks or trust companies as principals, conditioned to repay moneys on deposit, whereby pursuant to any law or decree of a court, the amount to be deposited shall be less than the penalty of the bond; in which cases the maximum amount on deposit at any one time will be regarded as the liability.

■ 12. Revise § 223.11 to read as follows:

§ 223.11 Limitation of risk: Protective methods.

The limitation of risk prescribed in § 223.10 may be complied with by the following methods:

(a) *Coinsurance.* Two or more companies may underwrite a single risk on any bond or policy, the amount of which does not exceed their aggregate underwriting limitations. Each company must limit its liability upon the face of the bond or policy to an amount which must be within its underwriting limitation.

(b) *Reinsurance*—(1) *Bonds running to the United States.* (i) With respect to all bonds running to the United States, a company writing such bonds must reinsure liability in excess of the underwriting limitation with one or more companies holding a certificate of authority from Treasury within 45 days from the date of execution and delivery of the bond. Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company. Where reinsurance is contemplated, Federal agencies may accept a bond from the direct writing company in satisfaction of the total bond requirement even though it may exceed the direct writing company's underwriting limitation. Within the 45-day period, the direct writing company shall furnish to the Federal agency any requested reinsurance agreements. However, a Federal agency may, in its discretion, require that the direct writing company obtain reinsurance within a lesser period than 45 days, and may require the direct writing company to provide completely executed reinsurance agreements before making a final determination that any bond is acceptable.

(ii) Direct writing companies may use reinsurance to protect liability in excess of their underwriting limitation for bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 3131, as amended) covering contracts for the construction, alteration, or repair of any public building or public work of the United States, as well as other types of Federal bonds. Use of reinsurance or coinsurance to protect such bonds is at the discretion of the direct writing

company. In addition to complying with the requirements of paragraph (b)(1)(i) of this section, the direct writing company must execute the following reinsurance agreement forms: Standard Form 273 (Reinsurance Agreement for a Bonds Statute Performance Bond), Standard Form 274 (Reinsurance Agreement for a Bonds Statute Payment Bond), and Standard Form 275 (Reinsurance Agreement in Favor of the United States). These forms are available on the General Services Administration website at www.gsa.gov.

(2) *Bonds not running to the United States.* A company holding a certificate of authority from Treasury writing risks covered by bonds or policies not running to the United States must reinsure liability in excess of its underwriting limitation within 45 days from the date of execution and delivery of the bond or policy with any of:

(i) One or more companies holding a certificate of authority from Treasury;

(ii) One or more companies recognized as a reinsurer in accordance with § 223.12;

(iii) A pool, association, etc., to the extent that it is composed of such companies; or

(iv) An instrumentality or agency of the United States that is permitted by Federal law or regulation to execute reinsurance contracts.

(3) *Limitation.* No certificate-holding company may cede to a reinsuring company recognized under § 223.12 any single risk in excess of 10 percent of the latter company's paid-up capital and surplus.

(c) *Other methods.* With respect to all risks other than Miller Act performance and payment bonds running to the United States, which must be coinsured or reinsured in accordance with paragraph (a) or (b)(1)(ii) of this section respectively, the excess liability may be protected:

(1) By the deposit with the company in pledge, or by conveyance to it in trust for its protection, of assets admitted by Treasury, the current market value of which is at least equal to the liability in excess of its underwriting limitation. Assets used to protect excess liability pursuant to this paragraph (c) cannot also be used to obtain credit for reinsurance pursuant to § 223.9(c); or

(2) If such obligation was incurred on behalf of or on account of a fiduciary holding property in a trust capacity, by a joint control agreement providing that the whole or a sufficient portion of the property so held may not be disposed of or pledged in any way without the consent of the insuring company.

■ 13. Revise § 223.12 to read as follows:

§ 223.12 Recognition as reinsurer.

(a) *Use of recognized reinsurers.* Companies holding a certificate of authority may:

(1) Receive credit for reinsurance ceded to a reinsurer recognized pursuant to this section, as described in § 223.9(c), and

(2) Protect liability in excess of their underwriting limit on risks not running to the United States by reinsuring the excess liability with a reinsurer recognized pursuant to this section.

(b) *Application.* Every company applying for recognition by Treasury as one of the categories of reinsurers in paragraphs (c) through (j) of this section, or annual renewal of such recognition, shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The applicant company must submit the documentation and must meet the requirements as outlined in this section and in supplemental guidance published by Treasury on its website.

(c) *Treasury recognition.* Recognition by Treasury will be effective for a term that expires on the last day of the following October. A list of reinsuring companies so recognized by Treasury will be published online at <https://www.fiscal.treasury.gov/surety-bonds/>.

(d) *Notice to Treasury.* Each company recognized pursuant to this section shall immediately notify Treasury if a U.S. state takes action to suspend or revoke the company's license or its status or eligibility as a Certified Reinsurer or Reciprocal Jurisdiction Reinsurer, or if the company notifies a U.S. state that a supervisory authority in its domiciliary jurisdiction takes regulatory action against it for serious noncompliance with applicable law (as determined by the supervisory authority in its domiciliary jurisdiction).

(e) *Eligibility.* A company is not eligible for recognition under this section if it only insures or reinsures risks of its parent, affiliated, or controlled unaffiliated business, or is deemed by Treasury to be primarily engaged in self-insurance.

(f) *Guidance.* Treasury may issue supplemental guidance regarding the timing, form, content, and its analysis of the submissions required pursuant to this section. Such guidance will be posted on its website.

(g) *Noncompliance.* Noncompliance with the requirements of this section may result in a company's application for recognition, or for renewal of its recognition, being denied.

(h) *Admitted reinsurers—(1) Application for recognition by U.S.*

company. Any company organized under the laws of the United States or of any state thereof, wishing to apply for recognition as an admitted reinsurer of surety companies doing business with the United States, shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company shall file the following data with Treasury and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(i) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22;

(ii) A written request for recognition as an admitted reinsurer, signed by an officer of the company. This request must indicate:

(A) The reason for applying for recognition;

(B) Whether the company has ever previously applied for recognition as an admitted reinsurer, whether Treasury approved the application, and the applicable dates; and

(C) If Treasury previously approved the company for recognition as an admitted reinsurer, the reason for termination of its recognition and the applicable date;

(iii) A certified copy of its charter or articles of incorporation with all amendments as of the date of application showing the legal name of the company and that it is authorized to write reinsurance;

(iv) A listing of the names of the company's current officers and directors as of the date of application, including a biographical affidavit of each officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(v) A certified copy of a license from any one state in which it has been authorized to do business showing its authority to write reinsurance and/or other lines of insurance;

(vi) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(vii) Annual statements of its financial condition, as of the close of the last two years preceding the date of application, on the annual statement form of the NAIC with all Schedules and Exhibits completed, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual

Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(viii) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC for the last two years preceding the date of application;

(ix) A memorandum setting forth the company's method of operation, including lines of business written and the company's underwriting and claims philosophy;

(x) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) for two years preceding the date of application;

(xi) A Statement of Actuarial Opinion as of the close of the last two years preceding the date of application provided by an independent qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC; and

(xii) Such other evidence as Treasury may request to establish that the company is solvent and able to meet the continuing obligation to carry out its contracts. Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (h)(1)(i) through (xi) of this section.

(2) *Application by a U.S. branch.* A U.S. branch of a non-U.S. company applying for such recognition must file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(i) The submissions listed in paragraphs (h)(1)(i) through (xii) of this section, except that the financial statement of such branch shall show that it has net assets of not less than \$250,000 over and above all liabilities; and

(ii) Evidence satisfactory to Treasury to establish that it has on deposit in the United States not less than \$250,000 available to its policyholders and creditors in the United States.

(3) *Application for renewal of recognition as an admitted reinsurer.* Any company recognized pursuant to paragraphs (h)(1) or (2) of this section wishing to apply for renewal of its recognition shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company must file the following data with Treasury and shall transmit

therewith the fee in accordance with the provisions of § 223.22:

(i) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22;

(ii) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(iii) Annual statements of its financial condition, as of the close of the preceding year, on the annual statement form of the NAIC with all Schedules and Exhibits completed, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(iv) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC as of the close of the preceding year;

(v) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) as of the close of the preceding year;

(vi) A Statement of Actuarial Opinion as of the close of the preceding year provided by an independent qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC;

(vii) A listing of the names of the company's current officers and directors as of the close of the preceding year, including a biographical affidavit of each new officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>; and

(viii) Such other evidence as Treasury may request to establish that the company is solvent and able to meet the continuing obligation to carry out its contracts. Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (h)(3)(i) through (vii) of this section.

(i) *Complementary reinsurers.* Any company may apply for recognition as a complementary reinsurer or annual renewal of such recognition provided the company is licensed to write reinsurance by and has its head office in (or is domiciled in) a non-U.S.

jurisdiction that is subject to an in-force Covered Agreement entered into with the United States pursuant to 31 U.S.C. 313–314, which Covered Agreement addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in a U.S. state or for allowing the ceding insurer to recognize credit for reinsurance. To obtain such recognition, the company must submit to Treasury the fee in accordance with the provisions of § 223.22 and must:

(1) Meet and maintain all capital and surplus, solvency, and market conduct requirements under the applicable Covered Agreement;

(2) Be recognized by at least one U.S. state as a Reciprocal Jurisdiction Reinsurer, as defined by the NAIC, and submit proof of such recognition; and

(3) Submit to Treasury:

(i) For initial applications for recognition, all information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the two most recently completed calendar years.

(ii) For applications for renewal of recognition, all semi-annual and annual filing information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the most recently completed calendar year.

(iii) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22.

(j) *Alien reinsurers.* Any company may apply for recognition or annual renewal of such recognition as an alien reinsurer, provided it is licensed to write reinsurance by, and has its head office or domicile in, a non-U.S. jurisdiction that is recognized by the NAIC as a Qualified Jurisdiction or as a Reciprocal Jurisdiction, provided that the Reciprocal Jurisdiction is not party to an in-force Covered Agreement as described in paragraph (i) of this section. To obtain such recognition, the company must submit to Treasury the fee in accordance with the provisions of § 223.22 and must:

(1) Be recognized by at least one U.S. state as a "Certified Reinsurer" or a "Reciprocal Jurisdiction Reinsurer," as defined by the NAIC or state law, and submit proof of such recognition;

(2) Meet and maintain all capital and surplus, market conduct, and other requirements for eligibility as a "Certified Reinsurer" or "Reciprocal Jurisdiction Reinsurer" in accordance

with the law and regulation of any U.S. state granting it such recognition; and

(3) Submit to Treasury:

(i) For initial applications for recognition, all information provided to any U.S. state regulator in the two most recently completed calendar years.

(ii) For applications for renewal of such recognition, all annual filing information provided to any U.S. state regulator in the most recently completed calendar year.

(iii) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22.

§ 223.13 [Removed and Reserved]

■ 14. Remove and reserve § 223.13.

§ 223.14 [Removed and Reserved]

■ 15. Remove and reserve § 223.14.

■ 16. Revise § 223.15 to read as follows:

§ 223.15 Paid-up capital and surplus for Treasury rating purposes; how determined.

Treasury determines the amount of paid-up capital and surplus of any company holding or seeking a certificate of authority or recognized (or seeking recognition) as an admitted reinsurer pursuant to § 223.12(h) on an insurance accounting basis under the regulations in this part, from the company's financial statements and other information, or by such examination of the company at its own expense as Treasury may deem appropriate.

■ 17. Revise the first three sentences of § 223.16 to read as follows:

§ 223.16 List of certificate holding companies.

A list of certificate holding companies is published annually as of August 1 in Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, with information as to underwriting limitations, areas in which listed sureties are licensed to transact surety business, and other details. If Treasury shall take any exceptions to the financial statements submitted by a company, before issuing Department Circular 570, Treasury shall give a company due notice of such exceptions. Copies of the Circular are available at <https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html>, or from the Surety Bonds Program, upon request. * * *

■ 18. Amend § 223.17 by revising paragraphs (b)(1)(iii) and (iv) to read as follows:

§ 223.17 Acceptance and non-acceptance of bonds.

* * * * *

(b) * * *
(1) * * *

(iii) Provide the company with an opportunity to rebut the stated reasons or cause; and

(iv) Provide the company with an opportunity to cure the stated reasons or cause.

* * * * *

■ 19. Amend § 223.18 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 223.18 Revocation.

(a) Treasury may initiate a revocation proceeding against a Treasury-certified company in one of two ways:

(1) Treasury, of its own accord, under § 223.19, may initiate revocation proceedings against the company when it has reason to believe that the company is not complying with 31 U.S.C. 9304–9308 and/or the regulations under this part; or

* * * * *

■ 20. Amend § 223.19 by revising the introductory text and paragraph (b)(2) to read as follows:

§ 223.19 Treasury-initiated revocation proceedings.

Whenever Treasury has reason to believe that a company is not complying with the requirements of 31 U.S.C. 9304–9308 and/or the regulations under this part, including but not limited to a failure to satisfy corporate and financial standards, Treasury shall:

* * * * *

(b) * * *

(2) The company responded, was provided an opportunity to demonstrate or achieve compliance, and failed to do so.

■ 21. Amend § 223.20 by revising paragraphs (b)(1) and (h)(8) and (9) to read as follows:

§ 223.20 Revocation proceedings initiated by Treasury upon receipt of an agency complaint.

* * * * *

(b) * * *

(1) The agency has determined, consistent with agency authorities, the principal is in default on the obligation covered by the bond. Alternatively, if the default has been litigated, documentation indicating a court of competent jurisdiction has determined the principal is in default;

* * * * *

(h) * * *

(8) The formal adjudication standards under the Administrative Procedure Act, 5 U.S.C. 554, 556, and 557, do not apply to the informal hearing or adjudication process.

(9) Treasury may promulgate additional procedural guidance

governing the conduct of informal hearings.

* * * * *

■ 22. Revise § 223.21 to read as follows:

§ 223.21 Reinstatement.

If, after one year from the date that Treasury notifies the company of its decision to decline to renew or revoke the certificate of authority of a company under this part, the company can demonstrate that the basis for the non-renewal or revocation has been cured, as determined by Treasury in its discretion, and that it can comply with, and does meet, all continuing requirements for certification under 31 U.S.C. 9304–9308 and this part, the company may submit an application to Treasury for reinstatement or reissuance of a certificate of authority, which will be granted without prejudice if all such requirements are met. Treasury may waive the one year waiting period for good cause shown, as determined by Treasury in its sole discretion.

■ 23. Revise § 223.22 to read as follows:

§ 223.22 Fees for service of the Treasury Department.

(a) Fees shall be imposed and collected, for the services listed in paragraphs (a)(1) through (6) of this section that are performed by Treasury, regardless of whether the action requested is granted or denied. An online payment portal is provided at <https://www.fiscal.treasury.gov/surety-bonds/>. The amount of the fee will be based on which of the following categories of service is requested:

(1) Examination of a company’s application for a certificate of authority as an acceptable surety on Federal bonds or for a certificate of authority as an acceptable reinsuring company on such bonds (see § 223.2(a));

(2) Examination of a company’s application for recognition as an admitted reinsurer of surety companies doing business with the United States (see § 223.12(h));

(3) Examination of a company’s application for recognition as a complementary reinsurer of surety companies doing business with the United States (see § 223.12(i));

(4) Examination of a company’s application for recognition as an alien reinsurer of surety companies doing business with the United States (see § 223.12(j));

(5) Determination of a company’s continuing qualifications for annual renewal of its certificate of authority (see § 223.2(b)); or

(6) Determination of a company’s continuing qualifications for annual renewal of its authority as an admitted

reinsurer, complementary reinsurer, or alien reinsurer (see § 223.12).

(b) In a given year a uniform fee will be collected from every company requesting a particular category of service, e.g., determination of a company’s continuing qualifications for annual renewal of its certificate of authority. However, Treasury reserves the right to redetermine the amounts of fees annually. Fees are determined in accordance with Office of Management and Budget Circular A–25, as amended.

(c) Specific fee information may be obtained from the Surety Bonds Program, or online at <https://www.fiscal.treasury.gov/files/surety-bonds/user-fees.pdf>. In addition, a notice of the amount of a fee referred to in paragraphs (a)(1) through (6) of this section will be published in the **Federal Register** as each change in such fee is made.

David A. Lebryk,
Fiscal Assistant Secretary.

[FR Doc. 2022–03937 Filed 3–2–22; 8:45 am]

BILLING CODE 4810–AS–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2021–0785; FRL–9591–01–R1]

Air Plan Approval; New Hampshire; Env-A 800 Testing and Monitoring Procedures, Env-A 619.03 PSD Program Requirements, and Env-A 1200 VOC RACT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions amend Testing and Monitoring Procedures for sources of air pollution; revise New Hampshire’s Prevention of Significant Deterioration (PSD) permitting program with respect to requirements for air quality modeling; fully approve certain infrastructure SIP requirements as they related to PSD permitting requirements for the 2015 Ozone and 2012 fine particle matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS); and amend Volatile Organic Compounds (VOCs) Reasonably Available Control Technology (RACT). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 4, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2021–0785 at <https://www.regulations.gov>, or via email to creilson.john@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact 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 legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: John Creilson, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100 (Mail code 05–2), Boston, MA 02109, tel. (617) 918–1688, email creilson.john@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Table of Contents

- I. Background
 - a. Env-A 800 Testing and Monitoring Procedures
 - b. Env-A 619.03 PSD Program Requirements

- c. Env-A 1200 VOC RACT
- II. Summary and Evaluation of State Submittal
 - a. Env-A 800 Testing and Monitoring Procedures
 - b. Env-A 619.03 PSD Program Requirements
 - c. Env-A 1200 VOC RACT
- III. Proposed Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background

a. Env-A 800 Testing and Monitoring Procedures

On August 19, 2021, the New Hampshire Department of Environmental Services (NH DES) submitted a revision to its State Implementation Plan (SIP). The submittal consists of revisions to an existing rule, Env-A 800, Testing and Monitoring Procedures, that was previously approved into the New Hampshire SIP. A clarification letter, along with the updated rule, was subsequently submitted on December 20, 2021. The clarification letter corrected an equation in the rule and omitted Env-A 810 from the New Hampshire SIP submittal. Env-A 800 establishes testing and monitoring procedures, calculation procedures, standards, and requirements used to determine compliance with Federal and state air pollution regulations. The State made a number of relatively minor changes to the existing rule as described within this proposed rulemaking and requested that the version submitted on August 19, 2021, and clarified on December 20, 2021, be incorporated into the New Hampshire SIP, except for (1) section 801.02(b) and (d), which are related to trading programs, and (2) section 810, Air Pollution Control Equipment Monitoring Plan; Additional Testing and Monitoring. NH DES also stated that this revision supersedes all prior approved versions.

b. Env-A 619.03 PSD Program Requirements

On September 16, 2021, NH DES submitted a revision to its SIP-approved regulation Part Env-A 619.03, the State's CAA PSD permitting program. The revision addresses conditional approvals related to the State's PSD program for purposes of the 2015 Ozone and 2012 PM_{2.5} NAAQS infrastructure SIP requirements. Specifically, EPA conditionally approved infrastructure SIP elements associated with CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(J), and 110(a)(2)(K). See 85 FR 67651 (October 26, 2020).

NH DES implements PSD largely through the incorporation by reference

of the Federal PSD program at 40 CFR 52.21, as it existed on a specific date. The State's current SIP-approved version of the Federal PSD program references 40 CFR 52.21 as it was codified on July 1, 2016. EPA's PSD regulations at 40 CFR 51.166(l) require a state's SIP to “provide for procedures which specify that [a]ll applications of air quality modeling . . . shall be based on the applicable models, data bases, and other requirements specified in” EPA's Guideline on Air Quality Models in appendix W of 40 CFR part 51, which was most recently revised on January 17, 2017. 82 FR 5182; see also 82 FR 14324 (Mar. 20, 2017). CAA sections 110(a)(2)(C), (D)(i)(II), and (J) require a state to make an infrastructure SIP submission demonstrating that the air agency has a complete PSD permitting program in place satisfying current requirements. CAA section 110(a)(2)(K) requires that the SIP provide for the performance of such air quality modeling as the EPA Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which EPA has established a NAAQS.

With New Hampshire's SIP referencing an earlier version of appendix W through its incorporation by reference of 40 CFR 52.21 as codified on July 1, 2016, EPA conditionally approved New Hampshire's infrastructure SIP elements related to CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(J), and 110(a)(2)(K), as the State's PSD program was not consistent with the current Federal requirements. EPA found that outside the issue with appendix W, the State has a comprehensive PSD permitting program in place satisfying all other PSD program elements.

Prior to EPA's proposal of the conditional approvals, NH DES committed in a letter dated June 3, 2020, to submit for EPA approval revisions to Env-A 619.03 to update the reference date for 40 CFR 52.21 so as to incorporate EPA's current “Guideline on Air Quality Models” in appendix W to 40 CFR part 51. The State's September 16, 2021, SIP submittal addresses its June 3, 2020, commitment to submit necessary revisions of Env-A 619.03 to EPA for approval into the SIP.

c. Env-A 1200 VOC RACT

On July 15, 2021, the NH DES submitted a revision to its SIP, which consists of amendments to an existing rule, Env-A 1200, Volatile Organic Compounds (VOC) Reasonably Available Control Technology (RACT), that was previously approved into the New Hampshire SIP on November 8,

2012 (77 FR 66921). Env-A 1200 establishes requirements for the implementation of reasonably available control technology on certain stationary sources located in New Hampshire that emit volatile organic compounds. The rule expired on June 1, 2019, so the NH DES has readopted the chapter with minor amendment for clarity and to align with Federal requirements.

II. Summary and Evaluation of State Submittal

a. Env-A 800 Testing and Monitoring Procedures

On August 19, 2021, the New Hampshire Department of Environmental Services (DES) submitted state regulation Env-A 800, Testing and Monitoring Procedures, to EPA and requested that the rule be submitted into the State's SIP. A clarification letter, along with the updated rule, was subsequently submitted on December 20, 2021. The State indicated that these revisions supersede all prior approved versions.

New Hampshire made the request in light of recent changes to the rule as a matter of state law. The proposed amendments are as follows:

1. *Updates to the procedure for recertification of continuous emissions monitoring systems.* New Hampshire DES updated Env-A 800 to clarify and correct pre-test, sampling, and report submittal procedures for conducting Relative Accuracy Test Audits (RATAs) for recertifying Continuous Emissions Monitoring (CEM) systems installed at stationary sources.

2. *Updates to nitrogen oxides (NO_x) RACT testing requirements to be consistent with Federal requirements.* New Hampshire DES updated Env-A 800 to simplify testing requirements for gaseous concentration measurements for NO_x RACT-subject devices and tune-ups. For example, one change New Hampshire made to the NO_x RACT testing requirement was to clarify that sources only needed to choose one of the referenced test methods listed for gaseous concentration measurements, rather than use multiple test methods.

3. *Removal of language pertaining to time-shared CEM systems.* New Hampshire DES updated Env-A 808, Continuous Emission Monitoring, to remove a provision relating to time-shared CEM systems, as there no longer are any installed at any New Hampshire sources.

4. *Modification of audit requirements to be consistent with EPA requirements.* New Hampshire DES updated Env-A 800 to modify quarterly audit requirements for continuous opacity

monitors to follow 40 CFR part 60, appendix F, Procedure 3 procedures instead of 40 CFR part 60, appendix B, Performance Specification 1 requirements in order to align with changes in Federal requirements. For example, section 808.05(b) of the previously adopted rule was modified such that the quarterly audit requirements reference 40 CFR part 60, appendix F, Procedure 3, instead of 40 CFR part 60, appendix B, Performance Specification 1.

5. *Change in compliance testing for NO_x and carbon monoxide (CO).* New Hampshire DES updated Env-A 802.13, Compliance Stack Testing for Emissions of Nitrogen Oxides (NO_x) or Carbon Monoxide, to require that when compliance testing is done for either NO_x or CO, that testing be done for both gases.

6. *Definitions and calculations for multi-day rolling emissions averages.* New Hampshire DES updated Env-A 808.01, Definitions, to define "rolling average" as an arithmetic mean specified by an applicable emission limit. The calculations are defined in updated sections 808.01(h)(1)–(4).

7. *Modification of provisions of CEM systems.* New Hampshire DES updated Env-A 800 to revise provisions relative to installation, operation, and auditing of CEM systems to cover the inclusion of future Federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements for CEM systems.

EPA has reviewed New Hampshire's August 19, 2021 submittal of revisions to Env-A 800, Testing and Monitoring Procedures, and subsequent December 20, 2021 clarification, and determined that they represent approvable revisions to the version previously approved into the New Hampshire SIP.

b. Env-A 619.03 PSD Program Requirements

EPA has reviewed the State's September 16, 2021, SIP submittal with respect to revision for Env-A 619.03. NH DES readopted with amendments Env-A 619.03 on March 16, 2021. The readoption made the state's current regulations consistent with the Federal regulations as of July 1, 2019. NH DES amended Env-A 619.03 by including a new paragraph (d), which definitively states, "For the purposes of this part, the reference to Appendix W in 40 CFR 52.21(l) shall refer to the July 1, 2019 edition."

The changes NH DES made to its regulation sufficiently address EPA's October 26, 2020, conditional approvals of the PSD- and modeling-related

elements for the 2015 Ozone and 2012 PM_{2.5} NAAQS infrastructure SIP requirements. Specifically, the new paragraph (d) provides that air quality modeling procedures will be consistent with EPA's most recent revision of appendix W of 40 CFR part 51. Therefore, EPA proposes to replace the version of Env-A 619.03 currently in New Hampshire's SIP with the March 16, 2021, version and to convert the previous conditional approvals to full approvals.

c. Env-A 1200 VOC RACT

On July 15, 2021, NH DES submitted state regulation Env-A 1200, Volatile Organic Compounds (VOC) Reasonably Available Control Technology (RACT), to EPA requesting the rule be approved into the State's SIP, and that the previously approved version of the regulation be removed from the SIP. The proposed amendments are primarily as follows:

1. *Clarify exemptions.* Env-A 1201.04 was revised to remove an exemption for which an owner or operator may be exempt from the chapter if they applied for a source specific RACT permit, or permit modification, by May 31, 2013. Since this date has passed, this provision is no longer applicable and was replaced with a provision of similar intent, which states that a source now subject to a source specific RACT permit, or a consent decree agreement, would be exempt from the chapter. A provision was also added that reiterates language elsewhere in the chapter that a source's emissions must be below the relevant VOC category applicability threshold to be exempt from Env-A 1200.

2. *Expand alternative compliance procedures.* Env-A 1205.02 was revised to also be applicable to Env-A 1214 and 1220, flat wood paneling and adhesive coating operations, respectively. These source categories will be allowed to comply with their emission rates by implementing add-on controls or a "bubble," which is a process in which similar sources at a facility are collectively controlled. This form of alternative compliance must be no less stringent than the otherwise prescribed limits. This paragraph was also edited to include reference to Env-A 800, Testing and Monitoring Procedures, which are customarily necessary for evaluating compliance with this chapter.

3. *Clarify that related cleaning activity emissions are generally subject to this chapter.* To be consistent with EPA Control Techniques Guidelines (CTGs) documents, source emission applicability requirements was revised to expressly include the cleaning

activities associated with the relevant VOC RACT category. New Hampshire DES had, in practice, interpreted the previous Chapter as such, therefore the actual level of control is not expected to change because of this revision.

EPA has reviewed New Hampshire’s July 15, 2021, submittal of revisions to Env-A 1200, Volatile Organic Compounds (VOC) Reasonably Available Control Technology (RACT) and determined that they represent approvable revisions to the version previously approved into the New Hampshire SIP. These revisions primarily clarify existing requirements and in certain circumstances in which

they expand control options, are explicitly required to be no less stringent than the previous control requirements. Therefore, the revised rule is expected to achieve no fewer emission reductions than the previously approved version. Thus, revising the SIP to incorporate the revised rule will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. See CAA section 110(l).

III. Proposed Action

EPA is proposing to approve the New Hampshire revisions to (1) Env-A 800

submitted on August 19, 2021, and clarified on December 20, 2021; (2) Env-A 619.03 submitted on September 16, 2021; and (3) Env-A 1200 submitted on August 19, 2021. Furthermore, EPA is proposing to convert its October 26, 2020, conditional approvals of infrastructure SIP elements associated with CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(J), and 110(a)(2)(K) for the 2015 Ozone and 2012 PM_{2.5} NAAQS to a full approval. EPA’s proposed action regarding infrastructure SIP requirements for the 2015 ozone and 2012 PM_{2.5} NAAQS is contained in Table 1 below.

TABLE 1—PROPOSED ACTION ON NEW HAMPSHIRE’S INFRASTRUCTURE SIP ELEMENTS FOR THE 2015 OZONE AND 2012 PM_{2.5} NAAQS

Element	2015 ozone NAAQS	2012 PM _{2.5} NAAQS
(C)2: PSD program for major sources and major modifications	Approve	Approve.
(D)2: PSD	Approve	Approve.
(J)3: PSD	Approve	Approve.
(K): Air quality modeling and data	Approve	Approve.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the ADDRESSES section of this Federal Register document.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference New Hampshire regulations Env-A 800 as adopted on April 30, 2019, with the exception of section 801.02(b) and (d) and section 810; Env-A 619.03 as adopted on March 16, 2021; and Env-A 1200 as adopted on October 17, 2019. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the

person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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 Clean Air Act; and

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

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

List of Subjects in 40 CFR Part 52

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

Dated: February 18, 2022.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2022-04032 Filed 3-2-22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2022-0008; FRL-9609-01-R5]

Air Plan Approval; Wisconsin; Redesignation of the Revised Door County (Partial) Area to Attainment of the 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the revised Door County (partial) nonattainment area in Wisconsin is attaining the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard) and to act in accordance with a request from the Wisconsin Department of Natural Resources (WDNR) to redesignate the area to attainment of the 2015 ozone NAAQS, because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). Wisconsin submitted this request on January 5, 2022. EPA is also proposing to approve, as a revision to the Wisconsin State Implementation Plan (SIP), the emissions inventory for the area and the

State's plan for maintaining the 2015 ozone NAAQS through 2035 in the area. Finally, EPA is proposing to approve Wisconsin's 2030 and 2035 volatile organic compound (VOC) and oxides of nitrogen (NO_x) Motor Vehicle Emission Budgets (budgets) for this area and initiating the adequacy review process for these budgets.

DATES: Comments must be received on or before April 4, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2022-0008 at <https://www.regulations.gov> or via email to arra.sarah@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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

- I. What is EPA proposing?
- II. What is the background for these actions?
- III. What are the criteria for redesignation?
- IV. What is EPA's analysis of Wisconsin's redesignation request?
 - A. Has the area attained the 2015 ozone NAAQS?

B. Has Wisconsin met all applicable requirements of section 110 and part D of the CAA for the area, and does Wisconsin have a fully approved SIP for the area under section 110(k) of the CAA?

C. Are the air quality improvements in the area due to permanent and enforceable emission reductions?

D. Does Wisconsin have a fully approvable ozone maintenance plan for the area?

V. Has the state adopted approvable motor vehicle emission budgets?

VI. Proposed actions

VII. Statutory and executive order reviews

I. What is EPA proposing?

EPA is proposing to determine that the revised Door County (partial) nonattainment area in Wisconsin (the area) is attaining the 2015 ozone NAAQS, based on quality-assured and early¹ certified monitoring data for 2019–2021, and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the area from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also proposing to approve, as a revision to the Wisconsin SIP, the emissions inventory for this area and the State's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the area in attainment of the 2015 ozone NAAQS through 2035. Finally, EPA is proposing to approve the newly-established 2030 and 2035 budgets for the area.

II. What is the background for these actions?

Ground-level ozone is detrimental to human health. On October 1, 2015, EPA promulgated a revised health-based 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all the ozone monitoring sites in the area. See 40 CFR 50.19 and appendix U to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most

¹ Annual monitoring data is typically certified by May 1 of the following year. In this case Wisconsin has early-certified the 2021 ozone data for the area prior to the May 1, 2022, deadline.

recent three years of quality assured ozone monitoring data. This portion of the area was designated as a Marginal nonattainment area and as a Rural Transport Area (RTA)² for the 2015 ozone NAAQS on June 14, 2021 (86 FR 31438, effective July 14, 2021) based on 2014–2016 data.³ EPA is also proposing approval of the emission inventory and the motor vehicle emissions budgets (budgets) for the area.

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the

Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

IV. What is EPA’s analysis of Wisconsin’s redesignation request?

A. Has the area attained the 2015 ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2015 ozone NAAQS if it meets the 2015 ozone NAAQS, as determined in accordance with 40 CFR 50.19 and appendix U of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the 2015 ozone NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed

0.070 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA’s Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons,⁴ on average, for the 3-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the 3-year period. See section 4 of appendix U to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data for the 2019–2021 period. These data have been quality assured, are recorded in the AQS, and have been early certified. These data demonstrate that the area is attaining the 2015 ozone NAAQS. The annual fourth-highest 8-hour ozone concentration and the 3-year average of these concentrations (monitoring site ozone design value) for the area monitoring site are summarized in Table 1.

TABLE 1—ANNUAL FOURTH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND 3-YEAR AVERAGE OF THE FOURTH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE AREA

County	Monitor	Year	% Observed	Fourth high (ppm)	2019–2021 average (ppm)
Door	55–029–0004	2019	97	0.066	0.070
		2020	98	0.075	
		2021	99	0.070	

The area’s 3-year ozone design value for 2019–2021 is 0.070 ppm, which meets the 2015 ozone NAAQS. Therefore, in this action, EPA proposes to determine that the area is attaining the 2015 ozone NAAQS.

EPA will not take final action to determine that the area is attaining the NAAQS nor to approve the redesignation of this area if the design value of the monitoring site in the area violates the NAAQS prior to final approval of the redesignation. As discussed in section IV.D.3. below, Wisconsin has committed to continue

monitoring ozone in this area to verify maintenance of the 2015 ozone NAAQS.

B. Has Wisconsin met all applicable requirements of section 110 and part D of the CAA for the area, and does Wisconsin have a fully approved SIP for the area under section 110(k) of the CAA?

For redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (see

section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (see section 107(d)(3)(E)(ii) of the CAA). EPA finds that Wisconsin has met all applicable SIP requirements, for purposes of redesignation, under section 110 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2015 ozone NAAQS). Additionally, EPA finds that all applicable requirements of the Wisconsin SIP for the area have been fully approved under section 110(k) of the CAA. In making these

² EPA designated the area as a Rural Transport Area (RTA), which means EPA determined that the NO_x and VOC emissions from sources within the area do not make a significant contribution to ozone concentrations in the area itself or in other areas.

³ On December 22, 2017, EPA announced an anticipated 2015 ozone NAAQS nonattainment area designation for the portion of Door County Wisconsin north of the Sturgeon Bay Canal (including Newport State Park). On June 4, 2018 (83 FR 25776) (effective August 3, 2018), EPA, consistent with information provided by Wisconsin,

finalized designation of a smaller than anticipated nonattainment area limited only to the Newport State Park boundary. On June 10, 2020 (85 FR 35377), based on the area’s satisfaction of CAA requirements, EPA finalized redesignation to attainment for the Newport State Park area. On June 14, 2021 (86 FR 31438, effective July 14, 2021) as part of its review of certain area designations for the 2015 ozone standards in response to a July 2020, remand issued by the D.C. Circuit Court of Appeals (the D.C. Circuit), EPA designated as nonattainment of the 2015 ozone NAAQS the portion of Door

County north of the Sturgeon Bay canal (excluding the recently redesignated Newport State Park). This portion of Door County north of the Sturgeon Bay Canal (excluding Newport State Park) is known as the “Revised Door County” nonattainment area (or area) and is the subject of this redesignation proposal notice.

⁴ The ozone season is defined by state in 40 CFR 58 appendix D. The ozone season for Wisconsin is March 1–October 15. See 80 FR 65292, 65466–67 (October 26, 2015).

determinations, EPA ascertained which requirements are applicable for purposes of redesignation, and whether the required Wisconsin SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to these applicable requirements of the CAA.

The Calcagni memorandum⁵ describes EPA's interpretation of which requirements are "applicable" for purposes of redesignation under section 107(d)(3)(E) of the CAA. Under this interpretation, a requirement is not "applicable" unless it was due prior to the state's submittal of a complete redesignation request for the area. *See also* the Shapiro memorandum⁶ and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

1. Wisconsin Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Area for Purposes of Redesignation

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA outlines the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit

program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, *e.g.*, NO_x SIP call, Clean Air Interstate Rule (CAIR) and the Cross-State Air Pollution Rule (CSAPR). However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2015 ozone NAAQS. The section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826

(May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation 65 FR 37890 (June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation 66 FR 50399 (October 19, 2001).

We have reviewed Wisconsin's SIP and concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation.⁷

b. Part D Requirements

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The area was classified as Marginal under subpart 2 for the 2015 ozone NAAQS. Therefore, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in section 182(a) (Marginal nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements

CAA Section 172(b) requires states to submit SIPs meeting the requirements of section 172(c) no later than three years from the date of the nonattainment designation. For the area, the SIP provisions required under CAA section 172 were due August 3, 2021.

EPA previously approved Wisconsin's nonattainment NSR program on January 18, 1995 (60 FR 3538), and proposed an updated approval on January 19, 2022 (87 FR 2719). However, notwithstanding this approval, because PSD requirements will apply after redesignation, EPA has determined that areas being redesignated need not

⁵ "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the "Calcagni memorandum").

⁶ "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 ("the Shapiro memorandum").

⁷ On September 14, 2018, Wisconsin submitted a SIP to meet the requirements of section 110 for the 2015 ozone NAAQS. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 2015 ozone NAAQS nonattainment status of the area. Therefore, EPA concludes that these infrastructure requirements are not applicable requirements for purposes of review of the State's 2015 ozone NAAQS redesignation request.

comply with the requirement that an NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in the Nichols memorandum.⁸ See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Wisconsin's PSD program will become effective in the area upon redesignation to attainment. EPA approved Wisconsin's PSD program on October 6, 2014 (79 FR 60064) and February 7, 2017 (82 FR 9515).

ii. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity), as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements⁹ as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); see also 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless,

⁸ "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment" Memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, October 14, 1994 ("the Nichols memorandum").

⁹ CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of budgets, such as control strategy SIPs and maintenance plans.

Wisconsin has an approved conformity SIP for the Door County area. See 79 FR 10995 (February 27, 2014).

iii. Inventory Requirement

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, emission inventories for all areas designated as nonattainment for any NAAQS, including the ozone NAAQS. An emission inventory for ozone is an estimation of actual emissions of air pollutants that contribute to the formation of ozone in an area. Ozone is a gas that is formed by the reaction of VOC and NO_x in the atmosphere in the presence of sunlight (VOC and NO_x are referred to as ozone precursors). Therefore, an emission inventory for ozone focuses on the emissions of VOC and NO_x. VOC is emitted by many types of pollution sources, including power plants, industrial sources, on-road and nonroad mobile sources, smaller stationary sources, collectively referred to as area sources, and biogenic sources. NO_x is primarily emitted by combustion sources, both stationary and mobile.

Emission inventories provide emissions data for a variety of air quality planning tasks, including establishing baseline emission levels (anthropogenic [manmade] emissions associated with ozone standard violations), calculating emission reduction targets needed to attain the NAAQS and to achieve reasonable further progress (RFP) toward attainment of the ozone standard (not required in the area considered here), determining emission inputs for ozone air quality modeling analyses, and tracking emissions over time to determine progress toward achieving air quality and emission reduction goals. As stated above, the CAA requires the states to submit emission inventories for areas designated as nonattainment for ozone. For the 2015 ozone NAAQS, EPA specifies that states submit ozone season day emission estimates for an inventory calendar year to be consistent with the baseline year for RFP plan as required by 40 CFR 51.1310(b). For the RFP baseline year for the 2015 ozone NAAQS under 40 CFR 51.1310(b), states may use a calendar year for the most recently available complete triennial (3-year cycle) emissions inventory (40 CFR 51, subpart A) preceding the year of the area's effective date of designation as a nonattainment area. (83 FR 63034–63035, December 6, 2018). States are required to submit estimates of VOC and NO_x emissions for four general classes of anthropogenic sources: Stationary point sources; area sources; on-road

mobile sources; and nonroad mobile sources.

WDNR provided documentation of a 2014 NO_x and VOC base year emissions inventory requirement for the area. WDNR selected 2014 because this was one of the three years of ozone data indicating a violation of the ozone standard that were used to designate the areas as nonattainment for the 2015 ozone NAAQS. 83 FR 25778, 25779. Tables 2 and 3 summarize the 2014 NO_x and VOC emissions for the area in tons of emissions per ozone season day.

EPA has reviewed WDNR's requested SIP revision for consistency with sections 172(c)(3) CAA and 182(a)(1) of the CAA and with EPA's emission inventory requirements. In particular, EPA has reviewed the techniques used by WDNR to derive and quality assure the emission estimates. EPA has also considered whether Wisconsin has provided the public with the opportunity to review and comment on the development of the emission estimates, whether Wisconsin has confirmed that source facility emission statements are required for the 2015 ozone standard, and whether the State has addressed all public comments. WDNR documented the procedures used to estimate the emissions for each of the major source types including running the latest version of the Motor Vehicle Emission Simulator model (MOVES3.0.2) for the on-road and nonroad emissions. The documentation of the emission estimation procedures is thorough and is adequate for EPA to determine that Wisconsin followed acceptable procedures to estimate the emissions. Accordingly, we conclude that Wisconsin has developed inventories of NO_x and VOC emissions that are comprehensive and complete.

iv. Subpart 2 Section 182(a) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_x emitted within the boundaries of the ozone nonattainment area within two years of designation. The emissions inventory for the area, which was due August 3, 2020, is included in WDNR's recent redesignation request. EPA's analysis of the inventory is included above, and EPA proposes approval of this inventory as satisfying the 182(a)(1) inventory requirement.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections

to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The area is not subject to the section 182(a)(2) RACT “fix up” requirement for the 2015 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and, in any case, Wisconsin complied with this requirement for the larger Door County area under the prior 1-hour ozone NAAQS. See 59 FR 41709 (August 15, 1994) and 60 FR 20643 (April 27, 1995).

Section 182(a)(2)(B) requires each state with a Marginal ozone nonattainment area that implemented or was required to implement a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or that was already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2015 ozone NAAQS and the consideration of Wisconsin’s redesignation request for this standard, the area is not subject to the section 182(a)(2)(B) requirement because the area was not required to have an I/M program prior to Nov. 15, 1990.

Section 182(a)(2)(C), under the heading “Corrections to the State Implementation Plans—Permit Programs” contains a requirement for states to submit NSR SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within two years after the date of enactment of the 1990 CAA Amendments. For the purposes of the 2015 ozone NAAQS and the consideration of Wisconsin’s redesignation request for this standard, the area is not subject to the section 182(a)(2)(C) requirement because as mentioned previously EPA has determined that areas being redesignated need not comply with the requirement that an NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR.

Section 182(a)(4) specifies the emission offset ratio for Marginal areas but does not establish a SIP submission deadline. EPA’s December 6, 2018 implementation rule for the 2015 ozone NAAQS clarifies that nonattainment NSR permit program requirements applicable to the 2015 NAAQS are due three years from the effective date of the nonattainment designation. See 83 FR 62998, 63001. This approach is based on the provision in CAA section 172(b) requiring the submission of plans or

plan revisions “no later than 3 years from the date of the nonattainment designation.”

EPA proposed approval on January 19, 2022 (87 FR 2719) of Wisconsin’s nonattainment NSR SIP revision to address the 2015 ozone NAAQS in this area. In addition, EPA approved Wisconsin’s PSD program on October 6, 2014 (79 FR 60064) and February 7, 2017 (82 FR 9515). The State’s PSD program will become effective in the area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual VOC and NO_x emissions. As discussed below in section IV.D.4. of this proposed rule, Wisconsin will continue to update its emissions inventory at least once every three years. The emission statement requirement for the area was due August 3, 2020. EPA proposed on February 1, 2022 (87 FR 5438) to find that Wisconsin has satisfied the emissions statement requirement for Wisconsin nonattainment areas for the 2015 ozone NAAQS. Upon final rule, EPA would then affirm that EPA finds that the area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Area has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

At various times, Wisconsin has adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, EPA has fully approved the Wisconsin SIP for the area under section 110(k) for all requirements applicable for purposes of redesignation under the 2015 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (see the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the area due to permanent and enforceable emission reductions?

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to

permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. EPA proposes to determine that Wisconsin has demonstrated that the observed ozone air quality improvement in the area is due to permanent and enforceable reductions in VOC and NO_x emissions resulting from State measures adopted into the SIP and Federal measures.

In making this demonstration, the State has calculated the change in emissions between 2014 and 2019 in the area. Wisconsin also looked at ozone precursor emissions from the three major metro areas upwind of the area. For every metro area there was a net reduction in emissions (Tables 2–6). The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to Federal regulatory control measures (listed below) that Wisconsin and upwind states have implemented in recent years.¹⁰ In addition, Wisconsin provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. More details and EPA’s assessment of this analysis are provided in Section 3 Meteorology. Based on the information summarized below, EPA proposes to find that Wisconsin has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

¹⁰EPA designated the area as a Rural Transport Area (RTA), which means EPA determined that the NO_x and VOC emissions from sources within the area do not make a significant contribution to ozone concentrations in the area itself, or in other areas. Therefore, it is reasonable to find that the permanent and enforceable precursor emissions reductions required for redesignation must be from areas outside the area within Wisconsin’s control. The permanent and enforceable emissions reductions detailed in Wisconsin’s redesignation request and discussed in this proposed action represent statewide reductions from Wisconsin and specifically from Wisconsin’s Green Bay metropolitan area and Wisconsin’s Milwaukee metropolitan area, both of which are upwind of the area, and which, therefore, have the potential to impact ozone levels in the area. Additionally, permanent and enforceable reductions from Chicago, a multi-state metropolitan area upwind of the area, are listed. The Chicago metropolitan area generally consists of portions of Wisconsin, Illinois, and Indiana. For its upwind emissions reduction analysis for the Chicago metropolitan area, Wisconsin included: Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry, and Will Counties in Illinois; Jasper, Lake, Porter and Newton Counties in Indiana, and Kenosha County, Wisconsin.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional NO_x Controls

CAIR/CSAPR. Under the “good neighbor provision” of CAA section 110(a)(2)(D)(i)(I), states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state’s SIP must contain provisions prohibiting emissions from within that state which will contribute significantly to nonattainment of the NAAQS, or interfere with maintenance of the NAAQS, in any other state.

On May 12, 2005, EPA published CAIR, which required eastern states, including Wisconsin, to prohibit emissions consistent with annual and ozone season NO_x budgets and annual sulfur dioxide (SO₂) budgets (70 FR 25152). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter (PM_{2.5}) NAAQS and was designed to mitigate the impact of transported NO_x emissions, a precursor of both ozone and PM_{2.5}, as well as transported SO₂ emissions, another precursor of PM_{2.5}. The D.C. Circuit remanded CAIR to EPA for replacement in 2008. *North Carolina v. EPA*, 531 F.3d 896, *modified*, 550 F.3d 1176 (2008). While EPA worked on developing a replacement rule, implementation of the CAIR program continued as planned with the NO_x annual and ozone season programs beginning in 2009 and the SO₂ annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit’s remand, EPA published CSAPR to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 PM_{2.5} NAAQS, and the 2006 PM_{2.5} NAAQS.¹¹ Through Federal Implementation Plans (FIPs), CSAPR required electric generating units (EGUs) in eastern states, including Wisconsin, to meet annual and ozone season NO_x budgets and annual SO₂ budgets implemented through new trading programs. After delays caused by litigation, EPA started implementing the CSAPR trading programs in 2015, simultaneously discontinuing administration of the CAIR trading programs. On October 26, 2016, EPA published the CSAPR Update, which established, starting in 2017, a new ozone season NO_x trading program for EGUs in eastern states, including Wisconsin, to address the good neighbor

provision for the 2008 ozone NAAQS (81 FR 74504). The CSAPR Update is projected to result in a 20% reduction in ozone season NO_x emissions from EGUs in the eastern United States, a reduction of 80,000 tons in 2017 compared to 2015 levels. On April 30, 2021, EPA published the Revised CSAPR Update, which fully resolved the obligations of eastern states, including Illinois and Indiana (which are upwind of the area), under the good neighbor provision for the 2008 ozone NAAQS (82 FR 23054). The Revised CSAPR Update is estimated to reduce ozone season NO_x emissions from EGUs by 17,000 tons beginning in 2021, compared to emissions without the rule. The reduction in NO_x emissions from the implementation of CAIR and then CSAPR occurred during the attainment years, and additional emission reductions will occur throughout the maintenance period.

b. Federal Emission Control Measures

Reductions in VOC and NO_x emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduce both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule was phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NO_x and for particulate matter (PM). The VOC and NO_x tailpipe standards for light-duty vehicles represent approximately an 80% reduction from previous fleet average and a 70% reduction in per-vehicle PM standards. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average VOC and NO_x and per-vehicle PM standards. The evaporative emissions requirements in the rule are projected to result in approximately a 50% reduction from previous standards and apply to all light-duty and on-road gasoline-powered heavy-duty vehicles. Finally, the rule lowered the sulfur content of gasoline to an annual average of 10 ppm starting in January 2017. As projected by these estimates and demonstrated in the on-road emission modeling for the area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance

period, as older vehicles are replaced with newer, compliant model years.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-road heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_x, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 ppm by 2007, leading to additional reductions in combustion NO_x and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that 2015 NO_x and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimated that by 2030 NO_x and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the area, some of these emission reductions occurred during the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Nonroad Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for nonroad diesel engines and sulfur reductions in nonroad diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards are phased in for 2008 through 2015 model years based on engine size. The sulfur limits for nonroad diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented, compliance with this rule will cut NO_x emissions from these nonroad diesel engines by approximately 90%. As projected by these estimates and demonstrated in the nonroad emission modeling for the area, some of these emission reductions occurred during the attainment years and additional emission reductions will occur throughout the maintenance period.

Nonroad Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards are phased in from model year 2004 through 2012. When fully implemented, EPA estimates an overall 72% reduction in VOC

¹¹ In a December 27, 2011, rulemaking, EPA included Wisconsin in the ozone season NO_x program, addressing the 1997 ozone NAAQS (76 FR 80760).

emissions from these engines and an 80% reduction in NO_x emissions. As projected by these estimates and demonstrated in the nonroad emission modeling for the area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896) EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards have applied beginning in 2011 and are expected to result in a 15 to 25% reduction in NO_x emissions from these engines. Final Tier 3 emission standards have applied beginning in 2016 and are expected to result in approximately an 80% reduction in NO_x from these engines. As projected by these estimates and demonstrated in the nonroad emission modeling for the area, some of these emission reductions occurred during the attainment years and additional emission reductions will occur throughout the maintenance period.

2. Emission Reductions

Wisconsin calculated the change in emissions between 2014 and 2019 in the area and three major metro areas upwind of the area. For every metro area there was a net reduction in emissions (Tables 2–6). The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to the Federal regulatory control measures

(listed above). Wisconsin is using a 2014 emissions inventory as the nonattainment year. This is appropriate because it was one of the years used to designate the area as nonattainment. Wisconsin is using 2019 as the attainment year, which is appropriate because it is one of the years in the 2019–2021 period used to demonstrate attainment.

As mentioned previously, EPA designated the area as an RTA. Therefore, the permanent and enforceable precursor emissions reductions required for redesignation must be inclusive of areas outside the RTA within Wisconsin’s control. The permanent and enforceable emissions reductions discussed in this proposed action represent statewide reductions from Wisconsin and specifically from Wisconsin’s Green Bay metropolitan area¹² and Wisconsin’s Milwaukee metropolitan area,¹³ both of which are upwind of the area and in line with general wind patterns on exceedance days,¹⁴ and which, therefore, have the potential to impact ozone levels in the area. Additionally, permanent and enforceable reductions from Chicago, a multi-state metropolitan area¹⁵ upwind of the area, are listed. In developing the emissions inventory information for these upwind metropolitan areas for the year 2014, Wisconsin generally used the 2014 National Emissions Inventory (NEI) version 2 and the 2014 National Air Toxics Assessment (NATA) for point, area, on-road, and nonroad sources. For 2019 emissions, Wisconsin interpolated between the 2016 and 2023

emissions of EPA’s 2016 version 1 emissions modeling platform. On-road and nonroad emissions in Door County were modeled using MOVES3.

The emissions data that Wisconsin used were available in units of tons per year. Wisconsin expects summer day emissions to be slightly higher relative to the rest of the year due to increases in vehicle miles traveled (VMT) and nonroad activity. Therefore, Wisconsin calculated tons per summer day (tpsd) by dividing annual emissions for mobile source sectors by 330 rather than 365 days to avoid underestimating mobile source sector emissions. For the purpose of estimating regional emissions trends from areas upwind of the nonattainment area, Wisconsin assumed point and area source facilities operate steadily over 365 days each year. Therefore, Wisconsin estimated 2014 and 2019 summer day emissions by dividing the annual emissions for the point and area sectors by 365 days. EPA proposes to find Wisconsin’s methods to be reasonable given Wisconsin’s assumptions regarding emissions activity from the various source sectors.

Using the inventories described above, Wisconsin documents changes in VOC and NO_x emissions from 2014 to 2019 for the area as well as for the upwind metropolitan areas described above, including the Green Bay area, the Milwaukee area, and the Chicago area. Emissions data are shown in Tables 2 through 6. As shown in Table 6, overall NO_x and VOC emissions declined between 2014 and 2019.

TABLE 2—NO_x EMISSIONS FOR NONATTAINMENT YEAR 2014 (TPSD)

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.00	0.20	3.32	0.87	4.39
Green Bay area	15.57	2.63	4.05	11.20	33.45
Milwaukee area	21.06	17.87	28.19	57.74	124.86
Chicago area	156.24	96.68	158.24	311.75	722.91

TABLE 3—VOC EMISSIONS FOR NONATTAINMENT YEAR 2014 (TPSD)

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.21	0.74	3.38	0.29	4.62
Green Bay area	4.27	8.71	2.91	6.31	22.20
Milwaukee area	9.40	50.40	18.77	31.07	109.64
Chicago area	50.20	240.36	91.62	170.29	552.47

¹² For its upwind emissions reduction analysis for the Green Bay metropolitan area, Wisconsin included Brown County, WI.

¹³ For its upwind emissions reduction analysis for the Milwaukee metropolitan area, Wisconsin included: Ozaukee, Racine, Waukesha and Washington Counties in Wisconsin.

¹⁴ See the Technical Support Document for Wisconsin for the 2015 Ozone NAAQS for Counties Remanded to EPA at https://www.epa.gov/sites/default/files/2021-05/documents/wi_tsd_remand_final.pdf.

¹⁵ The Chicago metropolitan area generally consists of portions of Wisconsin, Illinois, and

Indiana. For its upwind emissions reduction analysis for the Chicago metropolitan area, Wisconsin included: Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake McHenry and Will Counties in Illinois; Jasper, Lake, Porter and Newton Counties in Indiana, and Kenosha County, Wisconsin.

TABLE 4—NO_x EMISSIONS FOR ATTAINMENT YEAR 2019 (TPSD)

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.00	0.20	2.99	0.61	3.80
Green Bay area	6.30	2.60	2.58	6.49	17.97
Milwaukee area	17.39	17.66	16.49	29.15	80.69
Chicago area	117.05	95.23	131.72	171.02	515.02

TABLE 5—VOC EMISSIONS FOR ATTAINMENT YEAR 2019 (TPSD)

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.13	0.74	2.28	0.22	3.37
Green Bay area	4.54	9.01	1.64	3.78	18.97
Milwaukee area	9.41	50.81	11.51	16.42	88.15
Chicago area	47.73	242.83	68.78	99.75	459.09

TABLE 6—CHANGE IN NO_x AND VOC EMISSIONS BETWEEN 2014 AND 2019 (TPSD)

	NO _x			VOC		
	2014	2019	Net change (2014–2019)	2014	2019	Net change (2014–2019)
Door County (partial)						
Point	0.00	0.00	0.00	0.21	0.13	0.08
Area	0.20	0.20	0.00	0.74	0.74	0.00
Nonroad	3.32	2.99	0.33	3.38	2.28	1.10
On-road	0.87	0.61	0.26	0.29	0.22	0.07
Total	4.39	3.80	0.59	4.62	3.37	1.25
Green Bay Area (Brown County only)						
Point	15.57	6.30	9.27	4.28	4.54	–0.26
Area	2.63	2.60	0.03	8.71	9.01	–0.30
Nonroad	4.05	2.58	1.47	2.91	1.64	1.27
On-road	11.20	6.49	4.71	6.31	3.78	2.53
Total	33.45	17.97	15.48	22.21	18.97	3.24
Milwaukee Area						
Point	21.06	17.39	3.67	9.40	9.41	–0.01
Area	17.87	17.66	0.21	50.40	50.81	–0.41
Nonroad	28.19	16.49	11.70	18.77	11.51	7.26
On-road	57.74	29.15	28.59	31.07	16.42	14.65
Total	124.86	98.07	26.79	109.64	97.57	12.07
Chicago Area						
Point	156.24	117.05	39.19	50.20	47.73	2.47
Area	96.68	95.23	1.45	240.36	242.83	–2.47
Nonroad	158.24	131.72	26.52	91.62	68.78	22.84
On-road	311.75	171.02	140.73	170.29	99.75	70.54
Total	722.92	632.06	90.86	552.47	506.84	45.63

3. Meteorology

Wisconsin included an analysis to further support its demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved is due to permanent and enforceable emission reductions and not unusually favorable meteorology. Ozone formation is a complex process with atmospheric

chemical reactions involving NO_x and VOC precursor species. Summertime ozone formation tends to be positively correlated with temperature and can be influenced by other meteorological factors such as wind speed, wind direction, and precipitation. Wisconsin examined the factors influencing high ozone at the Door County monitor from 2005–2020, isolated days with meteorological factors favorable to

ozone detected at Door County from 2005–2020 and plotted the temporal trend in ozone on these days during this time period from 2005–2020. Wisconsin's analysis grouped days with similar meteorology which normalizes the influence of meteorological variability on the underlying trend in ozone concentrations. Therefore, the remaining trend in ozone concentrations can be inferred to be due to trends in

non-meteorological predictors, such as reductions in precursor emissions. As such, Wisconsin’s analysis suggests that the observed long-term decreases in ozone concentrations including the more recent nonattainment to attainment year ozone concentrations are due to the permanent and enforceable reductions in ozone precursor emissions discussed earlier, rather than from meteorological factors. EPA finds the analysis to be a useful tool here in showing that air quality was not due to unusually favorable meteorology. Therefore, EPA finds that Wisconsin has shown that the air quality improvements in the area are due to permanent and enforceable emissions reductions and not unusually favorable meteorology.

D. Does Wisconsin have a fully approvable ozone maintenance plan for the area?

As one of the criteria for redesignation to attainment section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five

elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the area to attainment for the 2015 ozone NAAQS, Wisconsin submitted a SIP revision to provide for maintenance of the 2015 ozone NAAQS through 2035, more than 10 years after the expected effective date of the redesignation to attainment. As discussed below, EPA proposes to find that Wisconsin’s ozone maintenance plan includes the necessary components and to approve the maintenance plan as a revision of the Wisconsin SIP.

1. Attainment Inventory

EPA is proposing to determine that the area has attained the 2015 ozone NAAQS based on monitoring data for the period of 2019–2021. Wisconsin selected 2019 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_x. Attainment emissions inventories identify the levels of emissions in the nonattainment area that are sufficient to attain the NAAQS. As mentioned previously, EPA designated the area as an RTA. As such, Wisconsin included an attainment emissions inventory for the nonattainment area and additionally provided information about attainment year emissions for upwind metropolitan areas that have the potential to influence ozone levels in the RTA. The derivation of the attainment year emissions for these areas is discussed above in section IV.C.2. of this proposed rule. The attainment level emissions, by source category, are summarized in Tables 4 and 5, above.

2. Has the state documented maintenance of the ozone standard in the area?

Wisconsin has demonstrated maintenance of the 2015 ozone NAAQS through 2035 by projecting that current and future emissions of VOC and NO_x

for the area remain at or below attainment year emission levels and, additionally, that upwind areas within Wisconsin’s control having the potential to influence ozone levels in the area, including the Green Bay metropolitan area, the Milwaukee metropolitan area, and the Chicago metropolitan area, a portion of which is within Wisconsin, remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Wisconsin is using emissions inventories for the years 2030 and 2035 to demonstrate maintenance. 2035 is more than 10 years after the expected effective date of the redesignation to attainment, and 2030 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

Wisconsin generally used EPA’s 2016 Emissions Modeling Platform, Version 1, which includes base year 2016 emissions and emissions projections for the years 2023 and 2028. Wisconsin estimated 2030 and 2035 emissions by linearly extrapolating EPA’s 2023 and 2028 emissions projections. Wisconsin used the same methodology to convert annual tons to tpsd for the 2030 and 2035 emissions projections as it used for the 2014 and 2019 inventory estimates. Thus, Wisconsin derived 2030 and 2035 summer day emissions by dividing the annual emissions for the point and area sectors by 365 days and the mobile sectors by 330. Interim and future year emissions estimates are shown in Tables 7 through 11 below. Specifically for Door County, Wisconsin ran MOVES3 for on-road emissions in both 2030 and 2035 for Door County.

TABLE 7—NO_x EMISSIONS FOR INTERIM MAINTENANCE YEAR 2030 (TPSD)

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.00	0.19	2.18	0.30	2.67
Green Bay area	5.61	2.56	1.48	1.86	11.51
Milwaukee area	17.90	17.11	13.31	10.17	58.49
Chicago area	101.84	89.52	113.96	69.03	374.35

TABLE 8—VOC EMISSIONS FOR INTERIM MAINTENANCE YEAR 2030 (TPSD)

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.18	0.74	1.37	0.13	2.42

TABLE 8—VOC EMISSIONS FOR INTERIM MAINTENANCE YEAR 2030 (TPSD)—Continued

Area	Point	Area	Nonroad	On-road	Total
Green Bay area	4.55	9.38	1.41	1.97	17.31
Milwaukee area	9.75	51.43	10.82	8.68	80.68
Chicago area	46.45	249.38	66.68	49.96	412.47

TABLE 9—NO_x EMISSIONS FOR MAINTENANCE YEAR 2035 (TPSD)

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.00	0.19	2.16	0.26	2.61
Green Bay area	5.64	2.54	1.00	0.46	9.64
Milwaukee area	17.78	16.89	12.58	4.94	52.19
Chicago area	102.13	86.83	110.87	40.91	340.74

TABLE 10—VOC EMISSIONS FOR MAINTENANCE YEAR 2035 (TPSD)

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.18	0.75	1.28	0.12	2.33
Green Bay area	4.56	9.54	1.35	1.43	16.88
Milwaukee area	9.73	51.70	10.79	6.20	78.42
Chicago area	46.23	252.30	67.68	33.82	400.03

TABLE 11—CHANGE IN NO_x AND VOC EMISSIONS BETWEEN 2019 AND 2035 (TPSD)

	NO _x				VOC			
	2019	2030	2035	Net Change (2019–2035)	2019	2030	2035	Net Change (2019–2035)
Door County (partial)								
Point	0.00	0.00	0.00	0.00	0.13	0.18	0.18	–0.05
Area	0.20	0.19	0.19	0.01	0.74	0.74	0.75	–0.01
Nonroad	2.99	2.18	2.16	0.83	2.28	1.37	1.28	1.00
On-road	0.61	0.30	0.26	0.35	0.22	0.13	0.12	0.10
Total	3.80	2.67	2.61	1.19	3.37	2.42	2.33	1.04
Green Bay Area (Brown County only)								
Point	6.30	5.61	5.64	0.66	4.54	4.55	4.56	–0.02
Area	2.60	2.56	2.54	0.06	9.01	9.38	9.54	–0.53
Nonroad	2.58	1.48	1.00	1.58	1.64	1.41	1.35	0.29
On-road	6.49	1.86	0.46	6.03	3.78	1.97	1.43	2.35
Total	17.97	11.51	9.64	8.33	18.97	17.31	16.88	2.09
Milwaukee Area								
Point	17.39	17.90	17.78	–0.39	9.41	9.75	9.73	–0.32
Area	17.66	17.11	16.89	0.77	50.81	51.43	51.70	–0.89
Nonroad	16.49	13.31	12.58	3.91	11.51	10.82	10.79	0.72
On-road	29.15	10.17	4.94	24.21	16.42	8.68	6.20	10.22
Total	80.69	58.49	52.19	28.50	88.15	80.68	78.42	9.73
Chicago Area								
Point	117.05	101.84	102.13	14.92	47.73	46.45	46.23	1.50
Area	95.23	89.52	86.83	8.40	242.83	249.38	252.30	–9.47
Nonroad	131.72	113.96	110.87	20.85	68.78	66.68	67.68	1.10
On-road	171.02	69.03	40.91	130.11	99.75	49.96	33.82	65.93
Total	515.02	374.35	340.74	174.28	459.09	412.47	400.03	59.06

In summary, Wisconsin's maintenance demonstration for the area shows maintenance of the 2015 ozone NAAQS by providing emissions information to support the demonstration that future emissions of NO_x and VOC will remain at or below

2019 emission levels when taking into account both future source growth and implementation of future controls. Table 11 shows NO_x and VOC emissions are projected to decrease between 2019 and 2035.

In addition, EPA has recently conducted updated air quality modeling of the contiguous United States, projecting ozone concentrations at all air quality monitors in 2023, 2026, and

2032.¹⁶ That modeling incorporates the most recent updates to emissions inventories, including on-the-books emissions reductions, and meteorology. This modeling indicates that EPA does not project Door County to be in nonattainment of the 2015 ozone NAAQS, nor does the Agency expect the area to struggle with maintenance, in those modeled future years. We propose to find that EPA's ozone transport air quality modeling further supports Wisconsin's demonstration that the Door County area will continue to maintain the 2015 ozone NAAQS.

3. Continued Air Quality Monitoring

Wisconsin has committed to continue to operate the ozone monitor listed in Table 1 above. Wisconsin has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. Wisconsin remains obligated to meet monitoring requirements and to continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the AQS in accordance with Federal guidelines.

4. Verification of Continued Attainment

Wisconsin has confirmed that it has the legal authority to enforce and implement the requirements of the maintenance plan for the area. This includes the authority to adopt, implement, and enforce any subsequent statewide and/or area-specific emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of relevant emissions inventories. Wisconsin will continue to operate the current ozone monitor in Door County. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by the EPA.

To track future levels of emissions, Wisconsin will continue to develop and submit to EPA updated emission inventories for the area and upwind areas in Wisconsin at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions

Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Wisconsin was compiled for 2017, and 2020 is in progress. Point source facilities covered by Wisconsin's emission statement rule, Chapter NR 438 of the Wisconsin Administrative Code, will continue to submit VOC and NO_x emissions on an annual basis.

5. What is the contingency plan for the area?

Section 175A of the CAA requires the state to adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Wisconsin has adopted a maintenance plan for the area to address possible future ozone air quality problems. The maintenance plan adopted by Wisconsin has two levels of response, a warning level response and an action level response.

In Wisconsin's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.070 ppm or higher is monitored within the maintenance area. A warning level response will consist of Wisconsin conducting a study to determine whether the ozone value indicates a trend toward higher ozone values and whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will be completed no later than May 1st of the year after the ozone season in which the exceedance is detected.

In Wisconsin's plan, a violation of the 2015 ozone NAAQS within the maintenance area triggers an action

level response. When an action level response is triggered, Wisconsin will determine what additional control measures are needed to ensure future attainment of the 2015 ozone NAAQS. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. Wisconsin may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Wisconsin included the following list of potential contingency measures in its maintenance plan:

1. Anti-idling control program for mobile sources, targeting diesel vehicles;
2. Diesel exhaust retrofits;
3. Traffic flow improvements;
4. Park and ride facilities;
5. Rideshare/carpool program; and
6. Expansion of the vehicle emissions testing program.

To qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan.

EPA has concluded that Wisconsin's maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, Wisconsin has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA finds that the maintenance plan SIP revision submitted by Wisconsin for the area meets the requirements of section 175A of the CAA and EPA proposes to approve it as a revision to the Wisconsin SIP.

V. Has the state adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (*i.e.*, be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or any

¹⁶ Available at <https://www.epa.gov/air-emissions-modeling/2016v2-platform>.

required interim emission reductions or other milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas. (See 40 CFR 93.102(b).) Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment and are required to develop a CAA section 175A maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. See the SIP requirements for the 2015 ozone NAAQS in EPA’s December 6, 2018 implementation rule (83 FR 62998). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include budgets for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_x for ozone) to address pollution from on-road transportation sources. The budgets are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. See 40 CFR 93.101.

Under 40 CFR part 93, a budget for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt budgets for other years as well. The budgets serve as a ceiling on emissions from an area’s planned transportation

system. The budgets concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the budgets in the SIP and how to revise the budgets, if needed, subsequent to initially establishing budgets in the SIP.

B. What is the status of EPA’s adequacy determination for the proposed VOC and NO_x budgets for the area?

When reviewing submitted control strategy SIPs or maintenance plans containing budgets, EPA must affirmatively find that the budgets contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted budgets are adequate for transportation purposes, the budgets must be used by state and Federal agencies in determining whether transportation plans, transportation improvement programs and, in the case of isolated rural areas, proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.¹⁷

EPA’s substantive criteria for determining adequacy of a budgets are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission; provision for a public comment period; and EPA’s adequacy determination. EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the “New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court

Decision and Additional Rule Change,” on July 1, 2004 (69 FR 40004).

As discussed earlier, Wisconsin’s maintenance plan includes NO_x and VOC budgets for the area for 2035 and 2030, the last year of the maintenance period and an interim year, respectively. EPA has reviewed Wisconsin’s VOC and NO_x budgets for the area and, in this action, is proposing to approve them. We are also starting the adequacy review process for these budgets. Wisconsin’s January 5, 2022 maintenance plan SIP submission, including the VOC and NO_x budgets for the area, is available for public comment via this proposed rulemaking. The submitted maintenance plan, which includes the budgets, was endorsed by the Governor’s designee and was subject to a state public hearing. The budgets were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The budgets were clearly identified and precisely quantified using the following methodology. To accurately identify future on-road emissions, WDNR grew VMT from 2019 using growth rates provided by the Wisconsin Department of Transportation for two general classes of vehicles (automobiles and trucks). After growing the VMT for these two general classes, WDNR allocated the VMT to vehicle sub-classes based on the MOVES3 default VMT splits by vehicle class for Door County for 2030 and 2035. To account for additional driving during the summer, WDNR developed adjustment factors using data averaged over a 10-year period to convert the annual VMT (divided by 365) to ozone season weekday VMT. These budgets, when considered together with all other emissions sources, are consistent with maintenance of the 2015 ozone NAAQS.

TABLE 12—BUDGETS FOR THE AREA (TPSD)

	Attainment year 2019 on-road emissions	2030 estimated on-road emissions	2030 mobile safety margin allocation (%)	2030 budgets	2035 estimated on-road emissions	2035 mobile safety margin allocation (%)	2035 budgets
VOC	0.2235	0.1173	15	0.1349	0.1003	15	0.1153
NO _x	0.6141	0.2604	15	0.2995	0.2248	15	0.2586

As shown in Table 12, the 2030 and 2035 budgets exceed the estimated 2030 and 2035 on-road sector emissions. To accommodate future variations in VMT

in the area, Wisconsin allocated a portion of the safety margin (described further below) to the mobile sector.¹⁸ Wisconsin has demonstrated that with

mobile source emissions at or below 0.1349 TPSD and 0.1153 TPSD of VOC and 0.2995 TPSD and 0.2586 TPSD of NO_x in 2030 and 2035, respectively,

¹⁷ The transportation conformity rule defines isolated rural nonattainment and maintenance areas as areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have Federally required metropolitan

transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO’s metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas. (See 40 CFR

93.101.) Door County is an isolated rural area for transportation conformity purposes.

¹⁸ Allocation of a safety margin to an area’s motor vehicle emissions budgets is provided for by the transportation conformity rule. (See 40 CFR 93.124(a).)

including partial allocation of the safety margin, emissions are projected to remain under attainment year emission levels. EPA is proposing to approve the budgets for use to determine transportation conformity in the area, because EPA has determined that the area can maintain attainment of the 2015 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the budgets in conjunction with the levels of the projected emissions inventories for the upwind areas discussed above.

C. What is a safety margin?

A “safety margin” is the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for maintenance. 40 CFR 93.101. As noted in Table 11, the emissions in the area are projected to have safety margins of 0.35 TPSD for NO_x and 0.10 TPSD for VOC in 2035 (the difference between the attainment year, 2019, emissions and the projected 2035 emissions for all sources in the area). Similarly, there is a safety margin of 0.31 TPSD for NO_x and 0.09 TPSD for VOC in 2030. Even if emissions exceeded projected levels by the full amount of the safety margin, the area would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 12 above, Wisconsin is allocating a portion of that safety margin to the on-road mobile source sector. Specifically, in 2030, Wisconsin is allocating 15% or 0.0176 TPSD and 0.0391 TPSD of the VOC and NO_x safety margins, respectively. In 2035, Wisconsin is allocating 15% or 0.0150 TPSD and 0.0338 TPSD of the VOC and NO_x safety margins, respectively. Wisconsin is not requesting allocation to the budgets of the entire available safety margins reflected in the demonstration of maintenance. In fact, the amount allocated to the budgets represents only a small portion of the 2030 and 2035 safety margins. Therefore, even though the state is requesting budgets that exceed the projected on-road mobile source emissions for 2030 and 2035 contained in the demonstration of maintenance, the permissible level of on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Once allocated to on-road mobile sources, these safety margins will not be available for use by other sources. Further, the area is an RTA. Therefore, in addition to the

budgets, the estimated upwind emissions reductions throughout the maintenance period, which are described above, are also important for maintaining the 2015 ozone NAAQS in the area throughout the 10-year maintenance period.

VI. Proposed Actions

EPA is proposing to change the legal designation of the revised Door County (partial) area from nonattainment to attainment for the 2015 ozone NAAQS. Additionally, EPA is proposing approval of the emissions inventory for this area, which is a prerequisite to finalizing the redesignation. EPA is also proposing to approve, as a revision to the Wisconsin SIP, the State’s maintenance plan for the area. The maintenance plan is designed to keep the area in attainment of the 2015 ozone NAAQS through 2035. Finally, EPA is proposing to approve the newly established 2030 and 2035 budgets for the area and initiating the adequacy process for these budgets.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, the proposed actions to approve Wisconsin’s SIP Submissions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For these reasons, this action:

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

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

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

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

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

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

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 24, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022-04319 Filed 3-2-22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2020-0743; EPA-R05-OAR-2021-0886; EPA-R05-OAR-2022-0123; FRL-9567-01-R5]

Air Plan Approval; Indiana; Redesignation of the Indiana Portion of the Chicago-Naperville Area to Attainment of the 2008 Ozone Standard, NO_x RACT Waiver, and Serious Plan Elements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Indiana portion of the Chicago-Naperville, IL-IN-WI area (Chicago area) is attaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) and to redesignate the Indiana portion of the Chicago area to attainment for the 2008 ozone NAAQS, because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is proposing to approve, as a revision to the Indiana State Implementation Plan (SIP), the State's plan for maintaining the 2008 ozone NAAQS through 2035 in the Chicago area. EPA is also proposing to approve a waiver, for the Indiana portion of the Chicago area, from the oxides of nitrogen (NO_x) requirements of the CAA. EPA finds adequate and is proposing to approve Indiana's 2030 and 2035 volatile organic compound (VOC) and NO_x Motor Vehicle Emission Budgets for the Indiana portion of the Chicago area. Finally, the VOC reasonably available control technology (RACT), clean-fuel vehicle programs (CFVP), enhanced monitoring of ozone and ozone precursors (EMP), and Enhanced motor vehicle Inspection/Maintenance (I/M) SIP revisions. These SIP revisions satisfy the above requirements for a nonattainment area that is classified as a "Serious area" for the Indiana portion of the Chicago area under the 2008 ozone NAAQS.

DATES: Comments must be received on or before April 4, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2020-0743 (regarding the serious area elements), EPA-R05-OAR-2021-

0886 (regarding the redesignation), or EPA-R05-OAR-2022-0123 (regarding the NO_x RACT waiver) at <https://www.regulations.gov> or via email to arra.sarah@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Katie Mullen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-3490, Mullen.Kathleen@epa.gov.

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

- I. What is EPA proposing?
- II. What is the background for these actions?
- III. What are the criteria for redesignation?
- IV. What is EPA's analysis of Indiana's redesignation request?
- V. Has the state adopted approvable motor vehicle emission budgets?
- VI. Section 182(f) NO_x Exemption
- VII. VOC RACT in the Indiana Portion of the Chicago Area
- VIII. Clean-Fuel Vehicle Programs (CFVP)
- IX. Enhanced Monitoring of Ozone and Ozone Precursors (EMP)
- X. Enhanced I/M in the Indiana Portion of the Chicago Area
- XI. Proposed Actions
- XII. Statutory and Executive order Reviews

I. What is EPA Proposing?

EPA is proposing to take several related actions. EPA is proposing to

determine that the Indiana portion of the Chicago area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for 2019–2021, and that the Indiana portion of the Chicago area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The Indiana portion of the Chicago area consists of Lake and Porter Counties in Northwest Indiana. Indiana submitted this request on December 6, 2021, with additional information submitted on January 18, 2022. EPA is thus proposing to change the legal designation of the Indiana portion of the Chicago area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also proposing to approve, as a revision to the Indiana SIP, the State's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the Chicago area in attainment of the 2008 ozone NAAQS through 2035. EPA finds adequate and is proposing to approve the newly-established 2030 and 2035 motor vehicle emissions budgets (or budgets) for the Indiana portion of the Chicago area. EPA is proposing to approve a NO_x waiver, for the Indiana portion of the Chicago area, from the NO_x requirements of section 182(f) of the CAA, included in Indiana's January 18, 2022, submittal. EPA is also proposing to approve the VOC RACT SIP revisions included in Indiana's December 29, 2020, and September 17, 2021, submittals. Finally, EPA is proposing to approve the CFVP and the EMP SIP certifications included in Indiana's December 29, 2020, submittal and the Enhanced I/M certification in Indiana's December 29, 2020, and January 18, 2022 submittals. These elements satisfy the serious VOC RACT, CFVP, EMP, and Enhanced I/M requirements for the Indiana portion of the Chicago area for the 2008 ozone NAAQS.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.075 ppm, when truncated after the thousandth decimal place, at all ozone monitoring sites in the area. See

40 CFR 50.15 and appendix P to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. The Chicago area was originally designated as a Marginal nonattainment area for the 2008 ozone NAAQS on June 11, 2012 (77 FR 34221), effective July 20, 2012. EPA reclassified the Chicago area from Marginal to Moderate nonattainment on May 4, 2016 (81 FR 26697), effective June 3, 2016. The Chicago area was again reclassified to Serious on August 23, 2019 (84 FR 44238), effective September 23, 2019.

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) (General Preamble) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from

Bill Laxton, Director, Technical Support Division, June 18, 1990;

2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of Indiana's redesignation request?

A. Has the Indiana portion of the Chicago area attained the 2008 ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the entire Chicago area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2008 ozone NAAQS if it meets the 2008 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90 percent of the days within the ozone monitoring seasons,¹ on average, for the 3-year period, with a minimum data completeness of 75 percent during the ozone monitoring season of any year during the 3-year period. See section 4 of appendix P to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data from monitoring sites in the Chicago area for the 2019–2021 period. These data have been quality assured, are recorded in the AQS, and have been certified. These data demonstrate that the Chicago area is attaining the 2008 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for each monitoring site are summarized in Table 1.

¹ The ozone season is defined by state in 40 CFR 58, appendix D. The ozone season for Indiana is March–October. See 80 FR 65292, 65466–67 (October 26, 2015).

TABLE 1—ANNUAL FOURTH HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF THE FOURTH HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE CHICAGO-NAPERVILLE, IL-IN-WI 2008 OZONE AREA (ppm)

Site	County	Year			Average
		2019	2020	2021	2019–2021
Wisconsin					
55-059-0019	Kenosha	0.067	0.078	0.079	0.074
55-059-0025	Kenosha	0.066	0.078	0.072	0.072
Illinois					
17-031-0001	Cook	0.070	0.076	0.068	0.071
17-031-0032	Cook	0.071	0.077	0.077	0.075
17-031-0076	Cook	0.065	0.068	0.070	0.067
17-031-1003	Cook	0.069	0.077	0.068	0.071
17-031-1601	Cook	0.068	0.078	0.072	0.072
17-031-3103	Cook	0.064	0.068	0.060	0.064
17-031-4002	Cook	0.064	0.079	0.067	0.070
17-031-4007	Cook	0.066	0.072	0.069	0.069
17-031-4201	Cook	0.069	0.079	0.075	0.074
17-031-7002	Cook	0.069	0.074	0.078	0.073
17-043-6001	DuPage	0.070	0.073	0.069	0.070
17-089-0005	Kane	0.071	0.073	0.068	0.070
17-097-1007	Lake	0.066	0.076	0.077	0.073
17-111-0001	McHenry	0.070	0.076	0.069	0.071
17-197-1011	Will	0.060	0.067	0.065	0.064
Indiana					
18-089-0022	Lake	0.065	0.074	0.070	0.069
18-089-2008	Lake	0.065	0.071	0.068	0.068
18-127-0024	Porter	0.068	0.076	0.072	0.072
18-127-0026	Porter	0.071	0.067	0.066	0.068

The Chicago area's 3-year ozone design value for 2019–2021 is 0.075 ppm,² which meets the 2008 ozone NAAQS. Therefore, in this action, EPA proposes to determine that the Chicago area is attaining the 2008 ozone NAAQS.

EPA will not take final action to determine that the Chicago area is attaining the NAAQS nor to approve the redesignation of the Indiana portion of the Chicago area if the design value of a monitoring site in the area violates the NAAQS after proposal but prior to final approval of the redesignation. As discussed in section IV.D.3. below, Indiana has committed to continue monitoring ozone in this area to verify maintenance of the 2008 ozone NAAQS.

B. Has Indiana met all applicable requirements of section 110 and part D of the CAA for the Indiana portion of the Chicago area, and does Indiana have a fully approved SIP for the area under section 110(k) of the CAA?

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all

applicable requirements under section 110 and part D of title I of the CAA (*see* section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). EPA finds that Indiana has met all applicable SIP requirements, for purposes of redesignation, under section 110 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2008 ozone NAAQS). Additionally, with the exception of the NO_x exemption, Enhanced I/M, VOC RACT, CFVP, and EMP requirements of the CAA, EPA finds that all applicable requirements of the Indiana SIP for the area have been fully approved under section 110(k) of the CAA.

As discussed below, in this action EPA is proposing to approve Indiana's Enhanced I/M certification as meeting the serious I/M requirements of section 182(c)(3) of the CAA. Also, EPA is proposing to approve Indiana's VOC RACT submission as meeting the requirements of section 182(b)(2) of the CAA, CFVP certification as meeting the requirements of 182(c)(4) of the CAA, and EMP certification as meeting the requirements of section 182(c)(1) of the

CAA. Finally, EPA is proposing to approve a waiver, for the Indiana portion of the Chicago area, from the NO_x requirements of section 182(f) of the CAA.

In making these determinations, EPA ascertained which CAA requirements are applicable to the Indiana portion of the Chicago area, if applicable, whether the required Indiana SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992, Calcagni memorandum (*see* "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995)

² The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

(redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

EPA is proposing to determine that the Chicago area has attained the 2008 ozone standard. If that determination is finalized, under 40 CFR 51.918, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the reasonably available control measures (RACM) requirement of section 172(c)(1) of the CAA, the reasonable further progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) would not be applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

“The section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.” (General Preamble at 13564)

See also Calcagni memorandum at 6 (“The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.”).

1. Indiana Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Indiana Portion of the Chicago Area for Purposes of Redesignation

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, *e.g.*, NO_x SIP call, the Clean Air Interstate Rule (CAIR), Cross State Air Pollution Rule (CSAPR). However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked to a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2008 ozone NAAQS. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Indiana's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation.³

b. Part D Requirements

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Chicago area is classified as serious under subpart 2 for the 2008 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in sections 182(a), (b), and (c) (Marginal, Moderate, and Serious nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can

³ EPA has previously approved provisions of the Indiana SIP addressing section 110 elements under the 2008 ozone NAAQS; 80 FR 23713 (April 29, 2015), 84 FR 46889 (September 6, 2019).

be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements

CAA Section 172(b) requires states to submit SIPs meeting the requirements of section 172(c) no later than three years from the date of the nonattainment designation.

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the primary NAAQS. Under this requirement, a state must consider all available control measures, including reductions that are available from adopting RACT on existing sources. Because attainment has been reached in the Chicago area, no additional measures are needed to provide for attainment and section 172(c)(1) requirements are no longer considered to be applicable, as long as the area continues to attain the standard until redesignation. *See* 40 CFR 51.1118.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. EPA approved Indiana's RFP plan and RFP contingency measures on February 13, 2019 (84 FR 3711).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement was superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has previously approved Indiana's NSR program on February 13, 2019 (84 FR 3711).

However, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that the NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Indiana has demonstrated that the Indiana portion of the Chicago area will be able to maintain the 2008 ozone NAAQS without part D NSR in effect; therefore,

EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Indiana's PSD program will become effective in the Indiana portion of the Chicago area upon redesignation to attainment. EPA approved Indiana's PSD program on May 20, 2004 (69 FR 29071).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Indiana SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

Section 172(c)(9) requires the SIP to provide for the implementation of contingency measures if the area fails to make reasonably further progress or to attain the NAAQS by the attainment deadline. As noted previously, EPA approved Indiana's contingency measures for purposes of RFP on February 13, 2019 (84 FR 3711). With respect to contingency measures for failure to attain the NAAQS by the attainment deadline, this requirement is not relevant for purposes of redesignation because the Chicago area has demonstrated monitored attainment of the 2008 ozone NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918.

ii. Section 176 Conformity Requirements

Section 176(c) of the CAA requires that federally supported or funded projects conform to the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity), as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements⁴ as not applying for purposes of evaluating a redesignation request under section 107(d), because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Indiana has an approved conformity SIP for the Indiana portion of the Chicago area. *See* 84 FR 3711 (February 13, 2019). Indiana has submitted 2030 and 2035 VOC and NO_x motor vehicle emissions budgets (or budgets) for the Indiana portion of the Chicago area. The metropolitan planning organization that covers the Indiana portion of this area must use these budgets in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

iii. Subpart 2 Section 182(a), (b), and (c) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_x emitted within the boundaries of the ozone nonattainment area. EPA approved Indiana's base year emissions inventory for the Indiana portion of the Chicago area on April 7, 2017, and (82 FR 16934) February 13, 2019, (84 FR 3711).

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC RACT rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Indiana portion of the Chicago area is not subject to the section 182(a)(2) RACT "fix up" requirement for the 2008 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and because Indiana complied with this requirement for the Indiana portion of the Chicago area under the prior 1-hour ozone NAAQS. *See* 57 FR 8082 (March 6, 1992).

Section 182(a)(2)(B) requires each state, with a Marginal ozone

⁴ CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of motor vehicle emissions budgets, such as control strategy SIPs and maintenance plans.

nonattainment area that implemented or was required to implement a vehicle I/M program prior to the 1990 CAA amendments, to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA Amendments or already in the SIP at the time of the CAA Amendments, whichever is more stringent. For the purposes of the 2008 ozone standard and the consideration of Indiana's redesignation request for this standard, the Indiana portion of the Chicago area is not subject to the section 182(a)(2)(B) requirement, because the area was designated as nonattainment for the 2008 ozone standard after the enactment of the 1990 CAA Amendments and because Indiana complied with this requirement for the Indiana portion of the Chicago area under the prior 1-hour ozone NAAQS.

Section 182(a)(3)(B) requires the submission of an emission statement SIP. EPA approved Indiana's emission statement SIP for the Indiana portion of the Chicago area for the 2008 ozone NAAQS on April 7, 2017 (82 FR 16934) and on February 13, 2019 (84 FR 3711).

Section 182(b)(1) requires the submission of an attainment demonstration and RFP plan. EPA approved Indiana's attainment demonstration, RFP plan, and RFP contingency measures for the Indiana portion of the Chicago 2008 ozone NAAQS Moderate nonattainment area on February 13, 2019 (84 FR 3711). Because attainment has been reached, section 182(b)(1) requirements are no longer considered to be applicable, as long as the area continues to attain the standard. If EPA finalizes approval of the redesignation of the area, EPA will take no further action on the attainment demonstration submitted by Indiana.

Section 182(b)(2) requires states with Moderate nonattainment areas to implement VOC RACT with respect to each of the following: (1) All sources covered by a Control Technology Guideline (CTG) document issued between November 15, 1990, and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; and, (3) all other major non-CTG stationary sources. If no major non-CTG sources of VOC emissions or no sources in a CTG category exist in an applicable nonattainment area, a state may submit a negative declaration for that category. Indiana has adopted and submitted VOC RACT rules and negative source declarations to cover all applicable CTGs, and major non-CTG sources. EPA approved Indiana's Negative Declaration for the Oil and Gas CTG for the Indiana portion of the Chicago area for the 2008

ozone NAAQS on December 13, 2019 (84 FR 68050). EPA approved Indiana's VOC RACT program for the Indiana portion of the Chicago area for the 2008 ozone NAAQS on February 13, 2019 (84 FR 3711).

Indiana submitted VOC RACT SIP revisions for the Indiana portion of the Chicago area under the serious classification on December 29, 2020, and on September 17, 2021. For the reasons discussed in section VII., below, EPA is proposing to approve the SIP revisions submitted by Indiana as meeting the section 182(b)(2) RACT requirements for the Indiana portion of the Chicago area under the 2008 ozone NAAQS.

Section 182(b)(3) requires states to adopt Stage II gasoline vapor recovery regulations. On May 16, 2012 (77 FR 28772), EPA determined that the use of onboard vapor recovery technology for capturing gasoline vapor when gasoline-powered vehicles are refueled is in widespread use throughout the highway motor vehicle fleet and waived the requirement that current and former ozone nonattainment areas implement Stage II vapor recovery systems on gasoline pumps.

Section 182(b)(4) requires a Basic motor vehicle inspection and maintenance (I/M) program for each state with a Moderate ozone nonattainment area. EPA approved Indiana's Basic I/M program certification for the Indiana portion of the Chicago area for the Moderate classification of the 2008 ozone NAAQS on February 13, 2019 (84 FR 3711).

Regarding the source permitting and offset requirements of sections 182(a)(2)(C), 182(a)(4), and 182(b)(5), Indiana currently has a fully-approved part D NSR program in place. EPA approved Indiana's NSR SIP on February 13, 2019 (84 FR 3711). EPA approved Indiana's PSD program on May 20, 2004 (69 FR 29071). The state's PSD program will become effective in the Indiana portion of the Chicago area upon redesignation of the area to attainment.

Section 182(f) establishes NO_x requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_x reductions would not contribute to attainment. As discussed in section VI. below, we are proposing such a determination for the Indiana portion of the Chicago area as requested by Indiana. If EPA grants Indiana's NO_x waiver request, Indiana need not have fully approved NO_x control measures under section 182(f) for the Indiana

portion of the Chicago area to be redesignated to attainment.

Section 182(c)(1) of the CAA requires states with nonattainment areas classified Serious or higher to adopt and implement a program to improve air monitoring for ambient concentrations of ozone, NO_x and VOC. EPA initiated the Photochemical Assessment Monitoring Stations (PAMS) program in February 1993. The PAMS program required the establishment of an enhanced monitoring network in all ozone nonattainment areas classified as Serious, Severe, or Extreme. On March 16, 1994 (59 FR 12168), EPA approved Indiana's SIP submission establishing an EMP in the Indiana portion of the Chicago area as required by Section 182(c)(1) of the CAA.

In section IX. below, EPA is proposing to approve Indiana's certification that its current EMP meets the Serious requirements for the Indiana portion of the Chicago area for the 2008 ozone NAAQS. EPA will not finalize this redesignation until we've approved the EMP program.

CAA section 182(c)(3) requires states with ozone nonattainment areas classified as Serious or higher to adopt and implement an Enhanced I/M program. Indiana submitted Enhanced I/M revisions on December 29, 2020, and January 18, 2022. For the reasons discussed in section X., below, EPA is proposing to approve the Indiana I/M certification as meeting the section 182(c)(3) Serious Enhanced I/M requirements for the Indiana portion of the Chicago area under the 2008 ozone NAAQS. EPA will not finalize this redesignation until it has approved the I/M program certification.

CAA section 182(c)(4) requires states with ozone nonattainment areas classified as Serious or higher to submit a SIP revision describing implementation of CFVP, as described in CAA title II part C (40 CFR 88). EPA approved Indiana's CFVP on March 21, 1996 (61 FR 11552). On July 29, 2021 (86 FR 34308), EPA published a final rule in which EPA determined that vehicles and engines certified to current emission standards under 40 CFR part 86 or 1036 are deemed to also meet the Clean Fuel Fleet standards as Ultra Low-Emission Vehicles.

In section VIII. below, EPA is proposing to approve Indiana's certification that its current CFVP meets the serious CFVP requirements for the Indiana portion of the Chicago area for the 2008 ozone NAAQS. EPA will not finalize this redesignation until we've approved the CFVP program.

The remaining section 182(c) requirements for areas classified as

serious include: An attainment demonstration, RFP, and RFP contingency measures. These elements are not needed to redesignate the Indiana portion of the Chicago area because the area has attained the 2008 ozone NAAQS. This rationale is outlined in 40 CFR 51.918, the general preamble, and the Calcagni memorandum at 6 (“The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.”) EPA believes that it is reasonable to interpret these provisions so as not to require areas that are meeting the ozone standard to make the SIP submissions to EPA described in the provisions as long as the areas continue to meet the standard. If such an area were to monitor a violation of the standard prior to being redesignated to attainment, however, the area would have to address the pertinent requirements and submit the SIP revisions described in those provisions to EPA.

Thus, as discussed above, with approval of Indiana’s 182(f) NO_x exemption, Enhanced I/M certification, VOC RACT, CFVP certification, and EMP requirements of the CAA, EPA finds that the Indiana portion of the Chicago area will satisfy all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Indiana Portion of the Chicago Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA.

At various times, Indiana has adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, if EPA finalizes approval of Indiana’s section 182(f) NO_x exemption, Enhanced I/M, VOC RACT, CFVP, and EMP submissions as meeting the Serious requirements of the CAA, EPA will have fully approved the Indiana SIP for the Indiana portion of the Chicago area under section 110(k) for all requirements applicable for purposes of redesignation under the 2008 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (see the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Chicago area due to permanent and enforceable emission reductions?

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. EPA has determined that Indiana has demonstrated that the observed ozone air quality improvement in the Chicago area is due to permanent and enforceable reductions in VOC and NO_x emissions resulting from state measures adopted into the SIP and Federal measures.

In making this demonstration, the State has calculated the change in emissions between 2011 and 2019. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to several regulatory control measures that the Chicago area and other portions of the area have implemented in recent years. In addition, Indiana provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, EPA finds that Indiana has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional NO_x Controls

CAIR/CSAPR. Under the “good neighbor provision” of CAA section 110(a)(2)(D)(i)(I), states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state’s SIP must contain provisions prohibiting emissions from within that state which will contribute significantly to nonattainment of the NAAQS, or interfere with maintenance of the NAAQS, in any other state.

On May 12, 2005, EPA published CAIR, which required eastern states, including Indiana, to prohibit emissions consistent with annual and ozone season NO_x budgets and annual sulfur dioxide (SO₂) budgets (70 FR 25152). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter (PM_{2.5}) NAAQS and was designed to mitigate the impact of transported NO_x

emissions, a precursor of both ozone and PM_{2.5}, as well as transported SO₂ emissions, another precursor of PM_{2.5}. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA for replacement in 2008. *North Carolina v. EPA*, 531 F.3d 896, modified, 550 F.3d 1176 (2008). While EPA worked on developing a replacement rule, implementation of the CAIR program continued as planned with the NO_x annual and ozone season programs beginning in 2009 and the SO₂ annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit’s remand, EPA published CSAPR to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 PM_{2.5} NAAQS, and the 2006 PM_{2.5} NAAQS. Through Federal Implementation Plans, CSAPR required electric generating units (EGUs) in eastern states, including Indiana, to meet annual and ozone season NO_x budgets and annual SO₂ budgets implemented through new trading programs. After delays caused by litigation, EPA started implementing the CSAPR trading programs in 2015, simultaneously discontinuing administration of the CAIR trading programs. On October 26, 2016, EPA published the CSAPR Update, which established, starting in 2017, a new ozone season NO_x trading program for EGUs in eastern states, including Indiana, to address the good neighbor provision for the 2008 ozone NAAQS (81 FR 74504). The CSAPR Update is estimated to result in a 20 percent reduction in ozone season NO_x emissions from EGUs in the eastern United States, a reduction of 80,000 tons in 2017 compared to 2015 levels. The reduction in NO_x emissions from the implementation of CAIR and then CSAPR occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

b. Federal Emission Control Measures

Reductions in VOC and NO_x emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduce both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule is being phased in

between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NO_x and for particulate matter. The VOC and NO_x tailpipe standards for light-duty vehicles represent approximately an 80 percent reduction from today's fleet average and a 70 percent reduction in per-vehicle particulate matter (PM) standards. Heavy-duty tailpipe standards represent about a 60 percent reduction in both fleet average VOC and NO_x and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50 percent reduction from current standards and apply to all light-duty and on-road gasoline-powered heavy-duty vehicles. Finally, the rule lowered the sulfur content of gasoline to an annual average of 10 ppm by January 2017. As projected by these estimates and demonstrated in the on-road emission modeling for the Indiana portion of the Chicago area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-road heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_x, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 parts per million by 2007, leading to additional reductions in combustion NO_x and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that by 2015 NO_x and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimated that by 2030 NO_x and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the Indiana portion of the Chicago area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Non-road Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for non-road diesel engines and sulfur reductions in non-road diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards were phased in for the 2008

through 2015 model years based on engine size. The SO₂ limits for non-road diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented, compliance with this rule will cut NO_x emissions from these non-road diesel engines by approximately 90 percent. As projected by these estimates and demonstrated in the non-road emission modeling for the Indiana portion of the Chicago area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Non-road Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards were phased in from model year 2004 through 2012. When fully implemented, EPA estimates an overall 72 percent reduction in VOC emissions from these engines and an 80 percent reduction in NO_x emissions. As projected by these estimates and demonstrated in the non-road emission modeling for the Indiana portion of the Chicago area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896), EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards apply beginning in 2011, are expected to result in a 15 to 25 percent reduction in NO_x emissions from these engines. Final Tier 3 emission standards apply beginning in 2016 and are expected to result in approximately an 80 percent reduction in NO_x from these engines. As projected by these estimates and demonstrated in the non-road emission modeling for the Indiana portion of the Chicago area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

2. Emission Reductions

Indiana is using a 2011 emissions inventory as the nonattainment year. This is appropriate because it was one of the years used to designate the Chicago area as nonattainment. Indiana is using 2019 as the attainment year,

which is appropriate because it is one of the years in the 2019–2021 period used to demonstrate attainment.

Area and non-road mobile emissions were collected from data available on EPA's Air Emissions Modeling website.⁵ For the 2019 attainment year, area and non-road source emissions inventory estimates were based on the data interpolation between 2016 base year and the 2023 projection year of EPA's 2016 version 1 Emission Modeling Platform.

IDEM compiled 2011 and 2019 actual point source and EGU-point source emissions from state inventory databases.

On-road mobile source emissions were developed in conjunction with the Northwestern Indiana Regional Planning Commission (NIRPC), the Metropolitan Planning Organization for the area that includes Lake, Porter, and LaPorte Counties. NIRPC maintains a travel demand forecast model that is used to identify where travel capacity will be needed and to determine the infrastructure requirements necessary to meet that need. The travel demand forecast model predicts the total daily vehicle miles traveled.

Indiana used the Motor Vehicle Emission Simulator (MOVES), EPA's recommended mobile source model, to develop on-road emissions rates. The modeling inputs to MOVES, which include detailed transportation data (e.g., vehicle-miles of travel by vehicle class, road class and hour of day, and average speed distributions), were provided by NIRPC.

On-road mobile source emissions were calculated from emissions factors produced by EPA's MOVES model and data extracted from the region's travel-demand forecast model. The inputs assume the continued phase-in of the Tier 3 standards beginning in 2017, continued operation of Indiana's vehicle I/M program, and reformulated gasoline program.

The annual emissions provided by this inventory are then used to calculate average summer day emissions using EPA guidance on how the model estimates daily emissions. The monthly profile percentages for June, July, and August were added together and then divided by the number of days in the season (92).

Emissions for Illinois and Wisconsin were based on inventories developed by those states in 2016 for an earlier round of redesignation requests. For the current document, 2011 and 2030 emissions are directly taken from these

⁵ <https://www.epa.gov/air-emissions-modeling/2016v1-platform>.

earlier inventories, whereas 2019 emissions were determined by interpolation from these inventories.

2035 emissions were determined by a projection from these inventories. Using the inventories described above, Indiana's submittal documents

changes in VOC and NO_x emissions from 2011 to 2019 for the Indiana portion of the Chicago area. Emissions data are shown in Tables 2 and 3.

TABLE 2—EMISSIONS REDUCTION OF NO_x EMISSIONS FOR THE ILLINOIS, INDIANA AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019
[Tons/day]

Sector	2011 nonattainment year	2019 attainment year	Emissions reduction
Illinois			
EGU Point	67.41	35.23	32.18
Non-EGU	52.58	47.55	5.03
Area	32.03	34.63	-2.6
On-Road	285.34	134.38	150.96
Non-road	176.60	121.63	54.97
Total	613.96	373.42	240.54
Indiana			
EGU Point	24.04	4.29	19.75
Non-EGU	70.77	59.91	10.86
Area	9.39	0.91	8.48
On-road	24.70	14.91	9.79
Non-road	15.84	13.43	2.41
Total	144.74	93.45	51.29
Wisconsin			
EGU Point	8.71	0.00	8.71
Non-EGU	0.09	0.08	0.01
Area	1.20	1.13	0.07
On-Road	4.82	1.81	3.01
Non-road	2.25	1.64	0.61
Total	17.07	4.66	12.41
Chicago-Naperville, IL-IN-WI 2008 ozone area			
Illinois	613.96	373.42	240.54
Indiana	144.74	93.45	51.29
Wisconsin	17.07	4.66	12.41
Total	775.77	471.53	304.24

TABLE 3—EMISSIONS REDUCTION OF VOC EMISSIONS FOR THE ILLINOIS, INDIANA AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019
[Tons/day]

Sector	2011	2019	Emissions reduction
Illinois			
EGU Point	0.62	0.97	-0.35
Non-EGU	47.63	45.35	2.28
Area	215.14	232.00	-16.86
On-Road	72.43	66.45	5.98
Non-road	101.83	67.67	34.16
Total	437.65	412.44	25.21
Indiana			
EGU Point	0.54	0.47	0.07
Non-EGU	17.22	10.83	6.39
Area	18.26	17.00	1.26
On-road	9.58	6.80	2.78

TABLE 3—EMISSIONS REDUCTION OF VOC EMISSIONS FOR THE ILLINOIS, INDIANA AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019—Continued
[Tons/day]

Sector	2011	2019	Emissions reduction
Non-road	21.43	5.53	15.90
Total	67.03	40.63	26.40
Wisconsin			
EGU Point	0.38	0.00	0.38
Non-EGU	0.24	0.19	0.05
Area	4.10	3.58	0.52
On-Road	1.90	0.89	1.01
Non-road	1.14	0.70	0.44
Total	7.76	5.36	2.40
Chicago-Naperville, IL-IN-WI 2008 ozone area			
Illinois	437.65	412.44	25.21
Indiana	67.03	40.63	26.40
Wisconsin	7.76	5.36	2.40
Total	512.44	458.43	54.01

As shown in Tables 2 and 3, NO_x and VOC emissions in the Indiana portion of the Chicago area declined by 51.29 tons/day and 26.40 tons/day, respectively, between 2011 and 2019. NO_x and VOC emissions throughout the entire Chicago area declined by 304.24 tons/day and 54.01 tons/day, respectively, between 2011 and 2019.

3. Meteorology

To further support IDEM’s demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved is due to permanent and enforceable emission reductions and not unusually favorable meteorology, an analysis was performed by the Lake Michigan Air Directors Consortium (LADCO). A classification and regression tree (CART) analysis was conducted with 2005 through 2020 data from Chicago-area ozone monitors. The goal of the analysis was to determine the meteorological and air quality conditions associated with ozone episodes, and construct trends for the days identified as sharing similar meteorological conditions.

Regression trees were developed for the monitors to classify each summer day by its ozone concentration and associated meteorological conditions. By grouping days with similar meteorology, the influence of meteorological variability on the underlying trend in ozone concentrations is partially removed and the remaining trend is presumed to be due to trends in precursor emissions or

other non-meteorological influences. The CART analysis showed that, reducing the impact of meteorology, the resulting trends in ozone concentrations declined over the period examined, supported the conclusion that the improvement in air quality was not due to unusually favorable meteorology.

D. Does Indiana have a fully approvable ozone maintenance plan for the Indiana portion of the Chicago area?

As one of the criteria for redesignation to attainment, section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to ensure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a

maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Indiana portion of the Chicago area to attainment for the 2008 ozone NAAQS, IDEM submitted a SIP revision to provide for maintenance of the 2008 ozone NAAQS through 2035, more than 10 years after the expected effective date of the redesignation to attainment. As discussed below, EPA proposes to find that Indiana’s ozone maintenance plan includes the necessary components and to approve the maintenance plan as a revision of the Indiana SIP.

1. Attainment Inventory

EPA is proposing to determine that the Indiana portion of the Chicago area has attained the 2008 ozone NAAQS based on monitoring data for the period of 2019–2021. IDEM selected 2019 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_x. The attainment emissions inventory identifies the levels of emissions in the Indiana portion of the Chicago area that are sufficient to attain the 2008 ozone NAAQS. The derivation of the attainment year emissions is discussed above in section IV.C.2. of this proposed rule. The attainment level emissions, by source category, are summarized in Tables 2 and 3 above.

2. Has the state documented maintenance of the ozone standard in the Indiana portion of the Chicago area?

Indiana has demonstrated maintenance of the 2008 ozone NAAQS through 2035 by ensuring that current and future emissions of VOC and NO_x for the Indiana portion of the Chicago area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Indiana is using emissions inventories for the years 2030 and 2035 to demonstrate maintenance. 2035 is more than 10 years after the expected effective date of the redesignation to attainment and 2030 was selected to demonstrate that emissions are not

expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

Area and non-road mobile emissions were collected from data available on EPA’s Air Emissions Modeling website. Using Emissions Modeling platform 2016v1, IDEM collected data for the 2023, 2028, and 2032 projected inventories.

Indiana’s 2030 emissions for point, area, and non-road source sectors were estimated primarily by interpolating between EPA’s projected modeling inventories for 2023, 2028, and 2032. 2035 emissions for point, area, and non-road source sectors were derived by utilizing the FORECAST.LINEAR function in Excel with inventory data points from 2016, 2023, 2028, and 2032. If the FORECAST.LINEAR function resulted in a negative value, the

emissions were assumed not to change. EGU-point emissions for 2030 were estimated from the Eastern Regional Technical Advisory Committee (ERTAC) model. Summer day inventories were derived for these sectors using the methodology described in section IV.V.2. above.

On-road mobile source emissions were developed through the combined effort of IDEM and the NIRPC and were calculated from emission factors produced by EPA’s MOVES model and data extracted from the region’s travel-demand model. The on-road 2030 and 2035 emission estimates are based on the actual travel demand model network runs generating estimated emissions to exist for those years under the Northwest Indiana 2050 Transportation Plan.

Projected emissions data are shown in Tables 4 through 5 below.

TABLE 4—PROJECTED EMISSIONS OF NO_x EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2030 AND 2035
[Tons/day]

Sector	2019 attainment year	2030 interim year	2035 maintenance year	Emissions reduction 2019–2035
Illinois				
EGU Point	35.23	43.59	40.97	– 5.74
Non-EGU	47.55	48.56	49.28	– 1.73
Area	34.63	34.97	35.04	– 0.41
On-Road	134.38	55.94	48.81	85.57
Non-road	121.63	106.80	108.27	13.36
Total	373.42	289.86	282.37	91.05
Indiana				
EGU Point	4.29	1.44	0.42	3.87
Non-EGU	59.91	60.79	61.51	– 1.60
Area	0.91	0.88	0.87	0.04
On-road	14.91	6.62	5.51	9.40
Non-road	13.43	10.25	8.49	4.94
Total	93.45	79.98	76.80	16.65
Wisconsin				
EGU Point	0.00	0.00	0.00	0.00
Non-EGU	0.08	0.12	0.12	– 0.04
Area	1.13	0.95	0.96	0.17
On-Road	1.81	0.85	0.75	1.06
Non-road	1.64	1.21	1.21	0.43
Total	4.66	3.13	3.04	1.62
Chicago-Naperville, IL-IN-WI 2008 ozone area				
Illinois	373.42	289.86	282.37	91.05
Indiana	93.45	79.98	76.80	16.65
Wisconsin	4.66	3.13	3.04	1.62
Total	471.53	372.97	362.21	109.32

TABLE 5—PROJECTED EMISSIONS OF VOC EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2030 AND 2035

[Tons/day]

Sector	2019 attainment year	2030 interim year	2035 maintenance year	Emissions reduction 2019–2035
Illinois				
EGU Point	0.97	2.52	2.80	– 1.83
Non-EGU	45.35	44.71	44.54	0.81
Area	232.00	225.11	225.11	6.89
On-Road	66.45	37.42	34.27	32.18
Non-road	67.67	66.41	67.37	0.30
Total	412.44	376.17	374.09	38.35
Indiana				
EGU Point	0.47	0.56	0.67	– 0.20
Non-EGU	10.83	10.84	10.90	– 0.07
Area	17.00	17.58	17.85	– 0.85
On-road	6.80	3.77	2.93	3.87
Non-road	5.53	4.80	4.35	1.18
Total	40.63	37.55	36.70	3.93
Wisconsin				
EGU Point	0.00	0.00	0.00	0.00
Non-EGU	0.19	0.26	0.26	– 0.07
Area	3.58	3.49	3.56	0.02
On-Road	0.89	0.54	0.47	0.42
Non-road	0.70	0.63	0.62	0.08
Total	5.36	4.92	4.91	0.45
Chicago-Naperville, IL-IN-WI 2008 ozone area				
Illinois	412.44	376.17	374.09	38.35
Indiana	40.63	37.55	36.70	3.93
Wisconsin	5.36	4.92	4.91	0.45
Total	458.43	418.64	415.70	42.73

In summary, Indiana's maintenance demonstration for the Indiana portion of the Chicago area shows maintenance of the 2008 ozone NAAQS by providing emissions information to support the demonstration that future emissions of NO_x and VOC will remain at or below 2019 emission levels when considering both future source growth and implementation of future controls. As shown in Tables 4 and 5, NO_x and VOC emissions in the Indiana portion of the Chicago area are projected to decrease by 16.65 tons/day and 3.93 tons/day, respectively, between 2019 and 2035. NO_x and VOC emissions in the entire Chicago area are projected to decrease by 109.32 tons/day and 42.73 tons/day, respectively, between 2019 and 2035.

3. Continued Air Quality Monitoring

Indiana has committed to continue to operate the ozone monitors listed in Table 1 above. Indiana has committed to consult with EPA prior to making

changes to the existing monitoring network should changes become necessary in the future. Indiana remains obligated to meet monitoring requirements, to continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the Air Quality System (AQS) in accordance with Federal guidelines.

4. Verification of Continued Attainment

Indiana has confirmed that it has the legal authority to enforce and implement the requirements of the maintenance plan for the Indiana portion of the Chicago area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. IDEM will

continue to operate the current ozone monitors located in the Indiana portion of the Chicago area. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by EPA.

In addition, to track future levels of emissions, Indiana will continue to develop and submit to EPA updated emission inventories for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Indiana was compiled for 2014. Point source facilities covered by Indiana's emission statement rule, 326

IAC 2–6–1, will continue to submit VOC and NO_x emissions on an annual basis.

5. What is the contingency plan for the Indiana portion of the Chicago area?

Section 175A of the CAA requires that the state adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to ensure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana has adopted a contingency plan for the Indiana portion of the Chicago area to address possible future ozone air quality violations. The contingency plan adopted by Indiana has two levels of response, a warning level response and an action level response.

In Indiana's plan, a warning level response will be triggered when an annual (1-year) fourth high monitored value of 0.079 ppm occurs in a single ozone season or when a two-year average fourth high monitored value of 0.076 ppm or higher occurs within the maintenance area. A warning level response will consist of Indiana conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

In Indiana's plan, an action level response is triggered when a three-year average fourth high value of 0.076 ppm

or greater is monitored within the maintenance area. When an action level response is triggered, Indiana will determine what additional control measures are needed to ensure future attainment of the 2008 ozone NAAQS. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. IDEM may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Indiana included the following list of potential contingency measures in its maintenance plan:

1. Enhancements to the vehicle emissions testing (I/M) program (increased weight limit, addition of diesel vehicles, etc.)
2. Asphalt paving (lower VOC formulation)
3. Diesel exhaust retrofits
4. Traffic flow improvements
5. Idle reduction programs
6. Portable fuel container regulation (statewide)
7. Park and ride facilities
8. Rideshare/carpool program
9. VOC cap/trade program for major stationary sources
10. NO_x Reasonably Available Control Technology

However, Indiana is not limited to the contingency measures listed above. To qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan. Indiana notes that because it is not possible to determine what control measures will be appropriate in the future, the list is not comprehensive.

EPA has concluded that Indiana's maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, Indiana has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Indiana portion of the Chicago area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA finds that the maintenance plan SIP revision submitted by IDEM for the Indiana portion of the Chicago area meets the requirements of section 175A of the CAA and EPA proposes to approve it as a revision to the Indiana SIP.

V. Has the state adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs or projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (*i.e.*, be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause or contribute to any new air quality violations, increase the frequency or severity of any existing air quality problems, or delay timely attainment or any required interim emissions reductions or any other milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment with an approved CAA section 175A maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. See the SIP requirements for the 2015 ozone NAAQS in EPA's December 6, 2018, implementation rule (83 FR 62998). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include motor vehicle emissions budgets (or budgets) for criteria pollutants, including ozone and their precursor pollutants (VOC and NO_x) to address pollution from on-road transportation sources. The budgets are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. See 40 CFR 93.101.

Under 40 CFR part 93, a budget for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt budgets for other years as well. The budgets serves as a ceiling on emissions from an area's planned transportation system. The budget concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the budget(s) in the SIP and how to revise the budget(s), if needed,

subsequent to initially establishing a budget(s) in the SIP.

Indiana's maintenance plan includes NO_x and VOC motor vehicle emissions budgets for the Indiana portion of the Chicago area for 2030 and 2035, the last year of the maintenance period and an interim year. The budgets were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The budgets were clearly identified and precisely quantified. These budgets, when considered together with all other emissions sources, are consistent with maintenance of the 2008 ozone NAAQS.

TABLE 6—MOTOR VEHICLE EMISSIONS BUDGETS FOR THE INDIANA PORTION OF THE CHICAGO AREA 2008 OZONE MAINTENANCE PLAN

[Tons/day]

Pollutant	2030 Budget	2035 Budget
NO _x	6.62	5.51
VOC	3.77	2.93

EPA is proposing to approve the budgets for use to determine transportation conformity in the Indiana portion of the Chicago area, because EPA has determined that the area can maintain attainment of the 2008 ozone NAAQS for the relevant maintenance period with onroad mobile source emissions at the levels of the budgets.

Also, EPA is reviewing the budgets to determine if the submitted budgets meet the adequacy criteria in the transportation conformity regulations (40 CFR 93.118(e)(4)). Additionally, as required by the transportation conformity rule (40 CFR 93.118(f)(2)), EPA is using this proposal to notify the public that EPA that it is beginning a 30-day comment period on the adequacy of the submitted motor vehicle emissions budgets. Comments on the adequacy of the budgets should be submitted to the docket for this proposal. EPA will make a final determination on the adequacy of the submitted budgets either in a final action on this proposal or notifying the State in writing, notifying the public by publishing a **Federal Register** notice and announcing the determination on EPA's adequacy web page.⁶

B. What is a safety margin?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As

noted in Tables 4 and 5 above, the emissions in the Indiana portion of the Chicago area are projected to have safety margins of 16.65 tons/day for NO_x and 3.93 tons/day for VOC in 2035 (the difference between the attainment year, 2019, emissions and the projected 2035 emissions for all sources in the Indiana portion of the Chicago area). Similarly, there is a safety margin of 13.47 tons/day for NO_x and 3.08 tons/day for VOC in 2030. Even if emissions exceeded projected levels by the full amount of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

Indiana is not allocating any of the safety margin to the mobile source sector. Indiana can request an allocation to the budgets of the available safety margins reflected in the demonstration of maintenance in a future SIP revision. The transportation conformity regulations allow states to allocate all or a portion of a documented safety margin to the motor vehicle emissions budgets for an area (40 CFR 93.124(a)).

VI. Section 182(f) NO_x Exemption

Section 182(f) establishes NO_x emission control requirements for ozone nonattainment areas. It provides that these emission control requirements, however, do not apply to an area if the Administrator determines that NO_x emission reductions would not contribute to attainment of the ozone standard. EPA's January 2005 document, "Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation," provides guidance for demonstrating that further NO_x reduction in an ozone nonattainment area will not contribute to ozone attainment. The guidance provides that three consecutive years of monitoring data showing attainment of the standard without implementation of section 182(f) NO_x provisions is adequate to demonstrate that "additional reductions of oxides of nitrogen would not contribute to attainment" CAA section 182(f)(1)(A). As described in the guidance document, approval of this type of NO_x exemption is contingent on continued monitored attainment of the standard.

On January 18, 2022, Indiana submitted a request for a waiver from the section 182(f) NO_x requirements for the Indiana portion of the Chicago area based on monitoring data for the years 2019–2021 showing attainment of the 2008 ozone standard in the area. Based on these data, EPA is proposing to approve Indiana's request for an exemption from the section 182(f) NO_x

requirements in the Indiana portion of the Chicago area. Upon final approval of the NO_x waiver, Indiana will not be required to adopt and implement NO_x emission control regulations pursuant section 182(f) for the Indiana portion of the Chicago area to qualify for redesignation. If the Chicago area violates before redesignation, then EPA would not be able to finalize approval of a NO_x waiver.

VII. VOC RACT in the Indiana Portion of the Chicago Area

Sections 172(c)(1) and 182(b)(2) of the CAA require states to implement RACT in ozone nonattainment areas classified as Moderate (and higher). Specifically, these areas are required to implement RACT for all major VOC emissions sources and for all sources covered by a Control Techniques Guideline (CTG). The major source threshold for serious nonattainment ozone areas is a potential to emit (PTE) 50 tons per year (TPY). A CTG is a document issued by EPA which establishes a "presumptive norm" for RACT for a specific VOC source category. States must submit rules, or negative declarations when no such sources exist for CTG source categories.

EPA's final rule to implement the 2008 ozone NAAQS (SIP Requirements Rule) indicates that states may meet RACT through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in their SIPs approved by EPA for a prior ozone NAAQS also represent adequate RACT control levels for attainment of the 2008 ozone NAAQS, or with a combination of these two approaches (80 FR 12264). In addition, a state may submit a negative declaration in instances where there are no CTG covered sources.

Indiana's VOC RACT demonstration under the Moderate classification was fully approved into the SIP by EPA on February 13, 2019, effective March 15, 2019 (84 FR 3711). Indiana certifies that the Indiana portion of the Chicago area's moderate area VOC RACT program also satisfies Serious area VOC RACT requirements.

Indiana certifies that the existing VOC rules contained in 326 Indiana Administrative Code (IAC) Article 8 satisfy the Serious area VOC RACT requirements for the Indiana portion of the Chicago area under the 2008 8-hour ozone NAAQS. The Serious major source threshold of 50 tons per year is addressed for non-CTG sources in 326 IAC 8–7.

Indiana certifies that the negative declaration for the CTGs for Fiberglass

⁶ See www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity.

Boat Manufacturing Materials, submitted June 5, 2009, and approved by EPA on February 24, 2010, is still up to date (75 FR 8246). Indiana certifies that the negative declaration for the CTGs for the Oil and Natural Gas Industry submitted October 25, 2018, and approved by EPA on December 13, 2019, is still up to date (84 FR 68050). Therefore, EPA is proposing to find that Indiana's submittal has met VOC RACT requirements for its portion of the Chicago area for the 2008 ozone NAAQS.

VIII. Clean Fuels Vehicles Program (CFVP)

CAA section 182(c)(4) requires states with ozone nonattainment areas classified as Serious or higher to submit a SIP revision request describing implementation of a CFVP, as described in CAA title II part C (40 CFR 88). EPA approved Indiana's CFVP on March 21, 1996 (61 FR 11552). CAA section 182(c)(4) included numerical standards for the CFVP that were intended to encourage innovation and reduce emissions for fleets of motor vehicles in certain nonattainment areas as compared to conventionally fueled vehicles available at the time. As originally adopted, those Clean Fuel Fleet standards were substantially more stringent than the standards that applied to vehicles and engines generally. Now that EPA has begun implementing Tier 3 emission standards in 40 CFR part 86, subpart S, the Clean Fuel Fleet standards are either less stringent than or equivalent to the standards that apply to vehicles and engines generally. On July 29, 2021 (86 FR 34308), EPA published a final rule in which EPA determined that vehicles and engines certified to current emission standards under 40 CFR part 86 or 1036 are deemed to also meet the Clean Fuel Fleet standards as Ultra Low-Emission Vehicles.

IX. Enhanced Monitoring of Ozone and Ozone Precursors (EMP)

Section 182(c)(1) of the CAA requires states with nonattainment areas classified as Serious or higher to adopt and implement a program to improve air monitoring for ambient concentrations of ozone, NO_x and VOC. EPA initiated the PAMS program in February 1993. See 40 CFR part 58, appendix D. The PAMS program required the establishment of an enhanced monitoring network in all ozone nonattainment areas classified as Serious, Severe, or Extreme. On March 16, 1994 (59 FR 12168), EPA approved Indiana's SIP submission establishing an enhanced monitoring program in the

Indiana portion of the Chicago area as required by Section 182(c)(1) of the CAA.

Since that time, EPA has concluded that requiring enhanced monitoring for ozone nonattainment areas classified as Moderate or above is appropriate for the purposes of monitoring ambient air quality and better understanding ozone pollution. In EPA's revision to the ozone standard on October 1, 2015, EPA relied on the authority provided in sections 103(c), 110(a)(2)(B), 114(a) and 301(a)(1) of the CAA to expand the PAMS applicability to areas other than those that are Serious or above ozone nonattainment and substantially to revise the PAMS requirements in 40 CFR part 58, appendix D (80 FR 65292). Specifically, this rule required states with Moderate and above ozone nonattainment areas to develop and implement an EMP. These plans should detail enhanced ozone and ozone precursor monitoring activities to be performed to better understand area-specific ozone issues.

Indiana will continue to meet its CAA section 182(c)(1) EMP requirements by maintaining an air monitoring network in the Indiana portion of the Chicago area and working with EPA through the air monitoring network review process, as required by 40 CFR part 58, to determine the adequacy of the ozone monitoring network, additional monitoring needs, and recommended monitor decommissions. Air monitoring data from these monitors will continue to be quality assured, reported, and certified according to 40 CFR part 58.

Therefore, EPA is proposing to find that Indiana has met the EMP requirements of Section 182(c)(1) for the Indiana portion of the Chicago area for the 2008 ozone NAAQS.

X. Enhanced I/M in the Indiana Portion of the Chicago Area

CAA section 182(c)(3) requires states with ozone nonattainment areas classified as Serious or higher to implement an Enhanced vehicle I/M program. The general purpose of motor vehicle I/M programs is to reduce emissions from in-use motor vehicles in need of repairs and thereby contribute to state and local efforts to improve air quality and to attain the NAAQS.

The 1990 CAA Amendments set additional requirements for I/M programs. For Moderate areas, a "Basic" program is required under section 182(b)(4). For Serious or worse areas, an "Enhanced" program is required under section 182(c)(3). EPA's requirements for Basic and Enhanced I/M programs are found in 40 CFR part 51, subpart S.

On June 6, 1995, and on September 28, 1995, IDEM submitted SIP revisions establishing an Enhanced I/M program in accordance with the requirements of the CAA as amended in 1990. The new Enhanced I/M program replaced the Basic I/M program in operation at the time in Lake, Porter, Clark, and Floyd counties. EPA fully approved Indiana's Enhanced I/M program on March 19, 1996 (61 FR 11149), including the program's legal authority and administrative requirements in 326 Indiana Administrative Code 13–1.1. On June 8, 2000, Indiana submitted amendments to the I/M rule incorporating, among other things, provisions for the testing of vehicles equipped with second generation on-board diagnostics systems (OBD). EPA approved those provisions on September 27, 2001 (66 FR 49297).

To support their certification of Indiana's Enhanced I/M program, the NIRPC, on behalf of IDEM, performed a modeling demonstration that the current I/M program meets the requirements of EPA's Enhanced performance standard for areas designated and classified under the 8-hour ozone standard, as specified in 40 CFR 51.351(i). NIRPC used EPA's MOVES emissions model in making this demonstration. The demonstration involves a comparison of emission reductions from EPA's model program specified in 40 CFR 51.351(i) and Indiana's actual program in Lake and Porter Counties.

To demonstrate that an Enhanced I/M program meets the performance standard, the actual I/M program must obtain the same or lower emission levels as the model EPA program within ± 0.02 gram per mile. Indiana's I/M performance standard analysis shows that Indiana's I/M program achieves emission reductions that are at least as great as this criterion. Indiana's demonstration supports its certification that its current I/M program in Lake and Porter counties meets the applicable Enhanced I/M performance standard requirements in 40 CFR part 51, subpart S for the 2008 ozone NAAQS.

XI. Proposed Actions

EPA is proposing to determine that the Chicago area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for 2019–2021. EPA is proposing to approve Indiana's January 18, 2022, NO_x exemption request as meeting section 182(f) requirements of the CAA. EPA is proposing to determine that if and when EPA approves Indiana's NO_x exemption request, VOC RACT, EMP, CFVP, and Enhanced I/M program SIP submittals, the Indiana portion of the Chicago area

will have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Indiana portion of the Chicago-Naperville, IL-IN-WI area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also proposing to approve, as a revision to the Indiana SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Indiana portion of the Chicago area in attainment of the 2008 ozone NAAQS through 2035. EPA finds adequate and is proposing to approve the newly established 2030 and 2035 motor vehicle emissions budgets for the Indiana portion of the Chicago area. Finally, EPA is proposing to approve the VOC RACT, CFVP, EMP, and Enhanced I/M program SIP revisions included in Indiana's December 29, 2020, and January 18, 2022, submittals, because they satisfy the Serious requirements of the CAA for the Indiana portion of the Chicago area.

XII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 22, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022-04072 Filed 3-2-22; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300-3, 300-70, 301-2, 301-10, 301-11, 301-13, 301-53, 301-70, 301-71, Appendix C to Chapter 301, 304-3, and 304-5

[FTR Case 2020-300-1; Docket No. 2022-0005, Sequence No. 1]

RIN 3090-AK40

Federal Travel Regulation (FTR); Common Carrier Transportation

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. General Services Administration (GSA) proposes to amend the Federal Travel Regulation (FTR) by adding definitions to the Glossary of Terms; adopting recommendations from agencies and the Senior Travel Official Council to simplify the FTR; consolidating duplicative regulations pertaining to the use of common carrier transportation accommodations; introducing premium economy airline accommodations as a class of service and creating management controls related to the use thereof; removing an outdated exception to use of a Contract City Pair fare; sequencing common carrier regulations in a more logical order; and making miscellaneous editorial corrections.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before May 2, 2022 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FTR case 2020-300-1 to: [Regulations.gov](https://www.regulations.gov): <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FTR Case 2020-300-1". Select the link "Comment Now" that corresponds with FTR Case 2020-300-1. Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FTR Case 2020-300-1" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. *Instructions:* Please submit comments only and cite FTR Case 2020-300-1, in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential

information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Tom Mueller, Director of Travel, Relocation, Mail, and Transportation Division, Office of Government-wide Policy, at 202-208-0247 or by email at thomas.mueller@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FTR Case 2020-300-1.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 5 U.S.C. 5707, the Administrator of General Services is authorized to prescribe regulations regarding reimbursement for Federal employees traveling on official business away from their official duty stations. The overall implementing authority is the FTR, codified in Title 41 of the Code of Federal Regulations, Chapters 300-304 (41 CFR chapters 300-304).

GSA proposes amending the FTR by defining multiple terms, to include “coach class”, “other than coach class” (which includes “first class”, “business class”, and “premium economy class”), “contract City Pair Program”, “scheduled flight time”, and “usually traveled route”, along with making other minor editorial changes in the Glossary of Terms. This proposed rule also relocates regulations that are informational and not directive in nature, such as “What is an extra-fare train?” (FTR § 301-10.163), and more appropriately places them in the “Glossary of Terms”.

GSA amended the FTR on October 27, 2009 (74 FR 55145) to implement recommendations contained in the U.S. Government Accountability Office (GAO) report, “Premium Class Travel: Internal Control Weaknesses Governmentwide Led to Improper and Abusive Use of Premium Class Travel” (GAO-07-1268). The final rule replaced “first-class”, “business-class”, and “premium-class” with a broad term, “other than coach-class.” Since that time, changes in the airline industry, such as unbundling of services and the creation of classes of service between coach and business class, has created uncertainty on what accommodations must be reported as other than coach class. Consequently, GSA proposes to define the term “other than coach class” to include “first class”, “business class”, and “premium economy class”,

while also clearly delineating that only first class and business class need to be reported as part of GSA’s efforts to ensure against improper and abusive Government travel costs per GAO-07-1268.

Including premium economy class as its own class of service aligns with current commercial airline industry practice and acknowledges a potentially cost-saving alternative to business class accommodations for Federal travelers.

During the past 10 years, business class airline accommodations have accounted for about 97% of the cost of all reportable other than coach class transportation. Of the aforementioned 97% of business class air trips, 35% were authorized using the “14-hour rule” per FTR 301-10.125. As premium economy airline tickets tend to be less expensive than business class, particularly for flights to destinations outside the continental United States (OCONUS), GSA proposes to allow agencies to authorize premium economy accommodations when scheduled flight time exceeds eight hours and travel is to, from or between OCONUS locations, *i.e.*, foreign and non-foreign areas. This exception for using premium economy is similar to travel allowances provided by the private sector and is aimed at reducing the use of first class and business class transportation with the anticipation that agencies will authorize premium economy where offered, instead of business or first class, when otherwise eligible. In the event a traveler is authorized to fly premium economy under the new eight-hour rule, eligibility for a rest period will still follow the 14-hour rule.

Some agencies have expressed the need for a rest period in excess of 24 hours when there is limited availability of scheduled departures, as travelers may encounter when traveling to certain foreign or remote locations. Accordingly, GSA proposes to add a note to section 301-11.20 informing agencies they may authorize a rest period in excess of 24 hours under the circumstances outlined in the proposed note.

Additionally, agencies are required to report annual travel data on certain types of travel per subpart B of FTR part 300-70. Premium class travel (formally known as “other than coach class” travel) is one such type of travel that requires annual reporting. Premium class travel reporting requirements are set forth in the FTR and do not have a statutorily mandated deadline for submission, which provides the Administrator of General Services latitude on setting reporting deadlines. Typically, several agencies request an

extension to submit their premium class travel data. To provide agencies more time to review their data, GSA proposes to set the premium class travel reporting requirement as December 31 of each year (instead of the current 60 days after the end of each fiscal year).

GSA also proposes to refer to the “premium class” or “other than coach class” travel report as the “first class and business class” travel report as reporting will be limited to only first and business class accommodations. The renaming of this report will avoid confusion with the newly proposed definitions of “other than coach class” and “premium economy class”. Agencies will not report premium economy class or coach class seating upgrades in the first class and business class report as costs for both are likely to be substantially lower than business and first class accommodations and therefore pose less risk for travel cost abuse. To further reduce agency reporting burden, GSA proposes that negative submissions only be required for CFO Act agencies and agencies that reported the use of first class or business class accommodations for the previous reporting cycle. All other agencies may provide a negative report, but would not be required to do so. These changes, along with clarifying that agencies only need to report first class and business class accommodations, will promote a common understanding across Government and improve agency reporting requirements.

GSA also proposes several changes to the FTR based on recommendations from the Travel and Expense Management Federal Integrated Business Framework working group, established by GSA in April 2017, in which GSA worked with other agencies to develop baseline travel and expense management standards. For example, the group proposed removing an outdated City Pair Program exemption which allowed travelers to use a non-contract fare if smoking is permitted on the contract air carrier and the nonsmoking section of the contract aircraft is not acceptable (FTR § 301-10.107(e)). In 2000, smoking was banned on all scheduled U.S. domestic and international airline flights between the U.S. and another country (65 FR 36771), which eventually led to smoke-free policies for airlines worldwide. Consequently, GSA proposes to remove this outdated exception to Contract City Pair Program fare use.

This proposed rule also eliminates the duplicative language in the FTR on the classes of accommodations for each mode of common carrier transportation, *i.e.*, FTR §§ 301-10.121 (air), 301-

10.160 (rail), and 301–10.182 (ship), the requirement to use coach class accommodations for each mode, *i.e.*, FTR §§ 301–10.122 (air), 301–10.161 (rail), and 301–10.183 (ship), and the duplicative regulations that prescribe exceptions to when a traveler may be authorized use of other than coach class accommodations, *i.e.*, FTR §§ 301–10.123 (air), 301–10.162 (rail), and 301–10.183 (ship), into a single definition for “coach class”, one regulation on the requirement to use coach class, and one regulation governing when other than coach class may be authorized, irrespective of the mode of common carrier transportation. Further, this rule proposes to eliminate examples of exceptional security circumstances that currently accompany the exception for use of other than coach class, as such circumstances are determined by the agency.

The proposed rule also clarifies circumstances under which agencies may authorize the use of sleeping cars on trains.

Lastly, due in part to the consolidation and elimination of multiple regulations, this proposed rule resequences the common carrier regulations found in FTR part 301–10. It also makes other miscellaneous editorial changes.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) anticipates that this will not be a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

III. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the

United States. OIRA has determined that this proposed rule is not a “major rule” as defined by 5 U.S.C. 804(2).

IV. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it applies only to Federal agencies and employees.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. GSA invites comments from small business concerns and other interested parties on the expected impact of this rulemaking on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rulemaking in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FTR Case 2020–300–1), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects

41 CFR Part 300–3

Government employees, Travel and transportation expenses.

41 CFR Part 300–70

Government employees, Reporting and recordkeeping requirements, Travel and transportation expenses.

41 CFR Part 301–2

Government employees, Travel and transportation expenses.

41 CFR Part 301–10

Common carriers, Government employees, Government property, Travel and transportation expenses.

41 CFR Part 301–11

Government employees, Travel and transportation expenses.

41 CFR Part 301–13

Government employees, Individuals with disabilities, Travel and transportation expenses.

41 CFR Part 301–53

Government employees, Travel and transportation expenses.

41 CFR Part 301–70

Administrative practice and procedure, Government employees, Individuals with disabilities, Travel and transportation expenses.

41 CFR Part 301–71

Accounting, Government employees, Travel and transportation expenses.

41 CFR Part 304–3 and 304–5

Government employees, Travel and transportation expenses.

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

Under 5 U.S.C. 5707 and as discussed in the preamble, GSA proposes to amend 41 CFR parts 300–3, 300–70, 301–2, 301–10, 301–11, 301–13, 301–53, 301–70, 301–71, Appendix C to Chapter 301, 304–3, and 304–5 as set forth below:

PART 300–3—GLOSSARY OF TERMS

■ 1. The authority citation for part 300–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586, Office of Management and Budget Circular No. A–126, revised May 22, 1992.

■ 2. Amend § 300–3.1 by:

■ a. Adding, in alphabetical order, definitions for “Coach class”, “Coach class seating upgrade programs”, and “Contract City Pair Program”;

■ b. Revising the definition of “Common carrier”;

■ c. Adding, in alphabetical order, definitions for “Extra-fare train” and “Other than coach class”;

■ d. Revising the definition of “Privately owned automobile”; and

■ e. Adding, in alphabetical order, definitions for “Scheduled flight time” and “Usually traveled route”;

The revisions and additions read as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Coach class—The class of accommodation that is normally the lowest class of fare offered by common carriers regardless of terminology used. For reference purposes only, coach class may also be referred to as tourist class, economy class, steerage, or standard class.

Coach class seating upgrade programs—Under commercial air transportation seating upgrade programs, a passenger may obtain a

preferable seat choice or increased amenities or services within the coach class seating area. These upgraded choices are generally available for a fee, as a program membership benefit (such as frequent flyer) or at an airport kiosk or gate. Coach class seating upgrade options are not considered a new or higher class of accommodation from coach as the seat is lower than other than coach class accommodations in terms of cost and amenities (e.g., seating girth and pitch, priority boarding, luggage allowance, expedited food/drink service).

* * * * *

Common carrier—Private sector supplier of air, rail, bus, ship, or other transit system.

* * * * *

Contract City Pair Program—A mandatory use (see § 301–10.110 for required users) Government program that provides commercially available scheduled air passenger transportation services to Government travelers on official business. The City Pair Program offers negotiated firm-fixed-price fares on one-way routes between airports that apply in either direction of travel. Fares may be issued using one of the following fare types, or others that the contract City Pair Program may solicit:

(1) **Capacity-controlled coach class contract fare (CA)**. A contract City Pair Program coach class fare that is less expensive than the unrestricted coach class fare (YCA), but has limited inventory availability, meaning, once the flight reaches a certain capacity, CA fares may no longer be available for booking. Unlike YCA fares, CA fares are restricted by the availability of seats. Accordingly, early booking may increase the likelihood of booking a CA fare. The first character of the three-character fare basis code varies by airline.

(2) **Unrestricted coach class contract fare (YCA)**. A contract City Pair Program coach class fare that is more expensive than a CA fare, but offers last seat (inventory) availability (unless a flight is already sold out), meaning, as long as coach class inventory is available to sell on the flight, the Government traveler can purchase it.

(3) **Contract business fare (CB)**. Contract fare offered by carriers in some domestic and international line item markets for business class service. The first character of the three-character fare basis code varies by airline.

* * * * *

Extra-fare train—A train that operates at an increased fare due to the extra

performance of the train, i.e., faster speed or fewer stops, or both.

* * * * *

Other than coach class—Any class of accommodations above coach class.

(1) **First class**. The highest class of accommodation offered by a common carrier in terms of cost and amenities.

(2) **Business class**. A class of accommodation offered by a common carrier that is lower than first class but higher than coach and premium economy, in cost and amenities.

(3) **Premium economy class**. A class of airline accommodation that is lower than both first class and business class, but higher than coach class in terms of cost and amenities. Airlines are constantly updating their offerings; however, for the purposes of this regulation, premium economy class is considered a separate, higher class of accommodation from coach class and is not considered a coach class seating upgrade.

* * * * *

Privately owned automobile—A car or light truck, including a van or a pickup truck, that is owned or leased for personal use by an individual, but not necessarily the traveler.

* * * * *

Scheduled flight time—The flight time between the originating departure point and the ultimate arrival point, as scheduled by the airline, including scheduled non-overnight time spent at airports during plane changes. Scheduled non-overnight time does not include time spent at the originating or ultimate arrival airports.

* * * * *

Usually traveled route—The most direct route between the employee's official station (or invitational traveler's home) and the temporary duty location, as defined by maps or consistent with established scheduled services of contract or other common carriers.

PART 300–70—AGENCY REPORTING REQUIREMENTS

■ 3. The authority citation for 41 CFR part 300–70 continues to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 121(c); 49 U.S.C. 40118; E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

■ 4. Amend subpart B of part 300–70 by revising the subpart heading to read as follows:

Subpart B—Requirement to Report Use of First Class and Business Class Transportation Accommodations

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

§ 300–70.100 Who must report the use of first class and business class transportation accommodations?

* * * * *

■ 6. Revise § 300–70.101 to read as follows:

§ 300–70.101 What information must we report on the use of first class and business class transportation accommodations?

GSA issues Bulletins that will inform you of the required information and reporting format(s) for each trip where you paid for at least one segment of first class or business class transportation accommodations that were more expensive than coach class accommodations for the same itinerary. FTR bulletins are updated as necessary and available at <https://www.gsa.gov/ftrbulletins>.

■ 7. Revise § 300–70.102 to read as follows:

§ 300–70.102 When must we report on the use of first class and business class transportation accommodations?

You must report to the U.S. General Services Administration, Office of Government-wide Policy no later than December 31 of each year. The reporting period is October 1 through September 30. Negative submissions, i.e., no data to report, are required for Chief Financial Officers (CFO) Act agencies and agencies that reported the use of first class or business class transportation accommodations for the previous reporting cycle. All other agencies may provide a negative report.

■ 8. Amend § 300–70.103 by revising the section heading, introductory text, and paragraphs (a) and (b) to read as follows:

§ 300–70.103 Are there any exceptions to the first class and business class reporting requirement?

Yes. You are not required to report data that is protected from public disclosure by statute or Executive Order. However, you are required to report the following aggregate information:

(a) Aggregate number of authorized first class and business class trips that are protected from disclosure;

(b) Total cost of actual first class and business class fares paid that exceeded the coach class fare; and

* * * * *

Part 301–2—GENERAL RULES

■ 9. The authority citation for 41 CFR part 301–2 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353; 49 U.S.C. 40118.

■ 10. Revise § 301–2.1 to read as follows:

§ 301–2.1 Must I have authorization to travel?

Yes, generally you must have written authorization before incurring any travel expense. When it is not practicable or possible to obtain such authorization before travel begins, your agency may approve reimbursement for specific travel expenses after travel is completed. However, written advance authorization is required for items in § 301–2.5(c), (i), (n), and (o) of this part.

■ 11. Amend § 301–2.4 by adding a new sentence to the end of the section to read as follows:

§ 301–2.4 For what travel expenses am I responsible?

* * * Failure to provide sufficient justification to your voucher approving official for such accommodations or services will limit your reimbursement to the constructive cost of that which your agency determines to be the actual and necessary cost of the travel expense(s) to perform the official travel.

§ 301–2.5 [Amended]

■ 12. Amend § 301–2.5, in paragraph (b) by removing “foreign air carrier” and adding in its place “foreign air carrier or foreign ship”.

PART 301—TRANSPORTATION EXPENSES

■ 13. The authority citation for part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707, 40 U.S.C. 121(c); 49 U.S.C. 40118; Office of Management and Budget Circular No. A–126, “Improving the Management and Use of Government Aircraft.” Revised May 22, 1992.

■ 14. Add §§ 301–10.101 through 301–10.104 to read as follows:

* * * * *

301–10.101 What classes of common carrier accommodations are available?

301–10.102 What class of common carrier accommodations must I use?

301–10.103 When may I use other than coach class accommodations?

301–10.104 What must I do if I change or do not use a common carrier reservation?

* * * * *

§ 301–10.101 What classes of common carrier accommodations are available?

Common carriers frequently update their levels of service and use various terminologies to distinguish those levels

of service. For the purposes of this title, the classes of common carrier transportation are categorized as coach class, premium economy class, business class, and first class.

Note 1 to § 301–10.101: If an airline flight has only two classes of accommodations available, *i.e.*, two distinctly different seating types (such as girth and pitch) and the front of the aircraft is termed “premium economy class” or higher by the airline and the tickets are fare coded as premium economy class or higher, then the front of the aircraft is deemed to be other than coach class. Alternatively, if an airline flight has only two seating sections available but equips both with one type of seating, (*i.e.*, seating girth and pitch are the same in both sections of the aircraft), and the seats in the front of the aircraft are fare coded as full fare economy class, and only restricted economy fares are available in the back of the aircraft, then the entire aircraft is to be classified as coach class. In this second situation, qualifying for other than coach class travel is not required to purchase an unrestricted full fare economy seat in the front of the aircraft as the entire aircraft is considered “coach class.”

§ 301–10.102 What class of common carrier accommodations must I use?

For all official travel you must use coach class accommodations, unless your agency authorizes or approves the use of other than coach class accommodations as provided under § 301–10.103.

§ 301–10.103 When may I use other than coach class accommodations?

You are required to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business when making official travel arrangements. Therefore, you are required to use the least expensive class of accommodations necessary to meet your needs and accomplish the agency’s mission. You may use the lowest other than coach class accommodations only when your agency specifically authorizes or approves such use as specified in paragraph (a), (b), or (c) of this section.

(a) Your agency may authorize or approve reimbursement for premium economy class accommodations when:

(1) Required to accommodate a medical disability or other special need;

(i) A disability must be certified annually in a written statement by a competent medical authority. However, if the disability is a lifelong condition, then a one-time certification statement is required. Certification statements must include at a minimum:

(A) A written statement by a competent medical authority stating that special accommodation is necessary;

(B) An approximate duration of the special accommodation; and

(C) A recommendation as to the suitable class of transportation accommodations based on the disability.

(ii) A special need must be certified annually in writing according to your agency’s procedures. However, if the special need is a lifelong condition, then a one-time certification statement is required;

(iii) If you are authorized under § 301–13.3(a) of this subchapter to have an attendant accompany you, your agency may also authorize the attendant to use premium economy class accommodations if you require the attendant’s services en route;

(2) Exceptional security circumstances, as determined by your agency, require premium economy class accommodations;

(3) Coach class accommodations on an authorized foreign carrier do not provide adequate sanitation or health standards;

(4) Regularly scheduled service between origin and destination points, including connecting points, provide only other than coach class accommodations and you certify such on your voucher;

(5) Your common carrier costs are paid in full through agency acceptance of payment from a non-Federal source in accordance with chapter 304 of this title;

(6) Your origin and/or destination are OCONUS and your scheduled flight time, including stopovers and change of planes, is in excess of eight hours;

(7) The use results in an overall cost savings to the Government by avoiding additional subsistence costs, overtime, or lost productive time while awaiting coach class accommodations;

(8) No space is available in coach class accommodations that allow you to arrive in time to accomplish the mission, which is urgent and cannot be postponed; or

(9) Required because of agency mission, consistent with your agency’s internal procedures pursuant to § 301–70.102(i).

(b) Your agency may authorize or approve reimbursement for business class accommodations under paragraphs (a)(1) through (5) and (a)(7) through (9) of this section, or when:

(1) Your origin and/or destination are OCONUS;

(2) Your scheduled flight time, including stopovers and change of planes, is more than 14 hours;

(3) You are required to report to duty the following day or sooner; and

(4) Your agency has determined business class accommodations are

more advantageous than authorizing a rest period en route or at your destination pursuant to § 301–11.20.

(c) Your agency may authorize or approve reimbursement for first class accommodations under paragraph (a)(1), (2), or (9) of this section, or when no coach class, premium economy class, or business class accommodations are reasonably available. “Reasonably available” means available on a common carrier that is scheduled to leave within 24 hours of your proposed departure time, or scheduled to arrive within 24 hours of your proposed arrival time.

Note 1 to § 301–10.103: Other than coach class accommodations, including upgraded contract City Pair Program fares, may be obtained at a traveler’s personal expense, including through redemption of program membership benefits, such as frequent flyer.

§ 301–10.104 What must I do if I change or do not use a common carrier reservation?

If you know you will change or not use your reservation, you must take action to change or cancel it as prescribed by your agency. Also, you must report all changes of your reservation according to your agency’s procedures in an effort to prevent losses to the Government. Failure to do so may subject you to liability for any resulting losses.

■ 15. Revise § 301–10.105 to read as follows:

§ 301–10.105 What must I do with unused Government Transportation Request(s) (GTR(s)), ticket(s) or refund application(s)?

You must submit any unused GTR(s), unused ticket coupons, unused e-tickets, unused e-vouchers, or refund applications to your agency in accordance with your agency’s procedures.

■ 16. Remove the undesignated center heading “Use of Contract City-Pair Fares” that appears above § 301–10.106.

■ 17. Revise § 301–10.106 to read as follows:

§ 301–10.106 Am I authorized to receive or keep a refund or credit for unused transportation?

No. You are not authorized to receive or keep a refund, credit, or any other negotiable document from a transportation service provider for undelivered services (except as provided in § 301–10.123) or any portion of an unused ticket issued in exchange for a GTR or billed to an agency’s centrally billed account. However, any charges billed directly to your individually billed Government charge card account should be credited to your account. You must immediately remit to the Government for any unused

transportation expense(s) credited to your individually billed Government charge card account.

§§ 301–10.107 through 109 [Removed and Reserved]

■ 18. Remove and reserve §§ 301–10.107 through 301–10.109.

■ 19. Add an undesignated subpart heading before § 301–10.110 to read as follows:

Use of Contract City Pair Program Fares

* * * * *

301–10.110 When must I use a contract City Pair Program fare?

301–10.111 Are there any exceptions to the use of a contract City Pair Program fare?

301–10.112 What requirements must be met to use a non-contract fare? 301–10.104
What must I do if I change or do not use a common carrier reservation?

301–10.113 What is my liability for unauthorized use of a non-contract carrier when contract service is available and I do not meet one of the exceptions for required use?

301–10.114 May I use contract passenger transportation service for personal travel?

* * * * *

■ 20. Revise §§ 301–10.110 through 301–10.114 to read as follows:

§ 301–10.110 When must I use a contract City Pair Program fare?

If you are an employee of an agency as defined in § 301–1.1 of this chapter, you must use a contract City Pair Program fare for scheduled air passenger transportation service unless one of the limited exceptions in § 301–10.111 exists.

Note 1 to § 301–10.110: When a contract City Pair Program carrier offers a lower cost capacity-controlled coach class contract fare (_CA) and an unrestricted coach class contract fare (YCA), you must use the lower cost capacity-controlled fare when it is advantageous and meets mission needs. A listing of contract City Pair Program fares is available at <https://www.gsa.gov/citypairs>.

Note 2 to § 301–10.110: Employees of the Government of the District of Columbia, with the exception of the District of Columbia Courts, are not eligible to use contract City Pair Program fares even though these employees otherwise may be covered by the FTR.

§ 301–10.111 Are there any exceptions to the use of a contract City Pair Program fare?

Yes, your agency may authorize use of a non-contract fare when:

(a) There are no accommodations available on any scheduled contract City Pair Program flight arriving to your destination in time to accomplish the purpose of your travel or use of contract service would require you to incur

unnecessary overnight lodging cost which would increase the total cost of the trip;

(b) The contractor’s flight schedule is inconsistent with explicit policies of your Federal department or agency with regard to scheduling travel during normal working hours;

(c) A non-contract carrier offers a lower fare to the general public that, if used, will result in a lower total trip cost to the Government (the combined costs of transportation, lodging, meals, and related expenses considered); or

Note to paragraph (c): This exception does not apply if the contract carrier offers the same or lower fare and has seats available at that fare, or if the fare offered by the non-contract carrier is restricted to Government and military travelers performing official business and may be purchased only with a contractor-issued charge card, centrally billed account (*e.g.*, YDG, MDG, QDG, VDG, and similar fares) or GTR where the two previous options are not available.

(d) Cost effective rail transportation is available and is consistent with mission requirements.

Note 2 to § 301–10.111: A group of 10 or more passengers traveling together on the same day, on the same flight, for the same mission, requiring group integrity and identified as a group by the travel management service upon booking is not a mandatory user of the Government’s contract City Pair Program fares. For group travel, agencies are expected to obtain air passenger transportation service that is practical and cost effective to the Government.

Note 3 to § 301–10.111: Contractors are not authorized to use contract City Pair Program fares to perform travel under their contracts.

Note 4 to § 301–10.111: Carrier preference is not a valid exception for using a non-contract City Pair Program fare.

§ 301–10.112 What requirements must be met to use a non-contract fare?

(a) Before purchasing a non-contract fare you must meet one of the exception requirements listed in § 301–10.111 and show approval on your travel authorization to use a non-contract fare; and

(b) If the non-contract fare is non-refundable, restricted, or has specific eligibility requirements, you must know or reasonably anticipate, based on your planned trip, that you will use the ticket; and

(c) Your agency must determine that the proposed non-contract transportation is practical and cost effective for the Government.

§ 301–10.113 What is my liability for unauthorized use of a non-contract carrier when contract service is available and I do not meet one of the exceptions for required use?

You are responsible for any additional costs or penalties incurred by you resulting from unauthorized use of non-contract service.

§ 301–10.114 May I use contract passenger transportation service for personal travel?

No, you may not use contract passenger transportation service for personal travel.

§ 301–10.115 through 301–10.117 [Removed and Reserved]

■ 21. Remove and reserve §§ 301–10.115 through 301–10.117.

§ 301–10.118 and 301–10.119 [Reserved]

■ 22. Add reserved §§ 301–10.118 and 301–10.119.

■ 23. Add § 301–10.120 after the undesignated center heading “Airline Accommodations” to read as follows:

§ 301–10.120 What must I do when different airlines furnish the same service at different fares?

When there is no contract City Pair Program fare and other carriers furnish the same service at different fares between the same points for the same type of accommodations, you must use the lowest cost service unless your agency determines that the use of higher cost service is more advantageous to the Government.

■ 24. Revise §§ 301–10.121 through 301–10.124 to read as follows:

* * * * *

301–10.121 When may I use coach class seating upgrade programs?

301–10.122 What must I do with compensation an airline gives me if it denies me a seat on a plane?

301–10.123 May I keep compensation an airline gives me for voluntarily vacating my seat on my scheduled airline flight when the airline asks for volunteers?

301–10.124 When may I use a reduced group or charter fare?

* * * * *

§ 301–10.121 When may I use coach class seating upgrade programs?

Use of upgraded coach class seating options is generally a traveler’s personal choice and therefore is at the traveler’s personal expense. However, your agency approving official may approve reimbursement of the additional seat choice fee according to part 301–13 of this chapter or internal agency policy (see § 301–70.102(k)).

§ 301–10.122 What must I do with compensation an airline gives me if it denies me a seat on a plane?

If you are performing official travel and a carrier denies you a confirmed reserved seat on a plane, you must give your agency any payment you receive for liquidated damages. You must ensure the carrier shows the “Treasurer of the United States” as payee on the compensation check and then forward the payment to the appropriate agency official.

§ 301–10.123 May I keep compensation an airline gives me for voluntarily vacating my seat on my scheduled airline flight when the airline asks for volunteers?

(a) Yes, you may keep airline compensation if:

(1) Voluntarily vacating your seat will not interfere with performing your official duties; and

(2) Additional travel expenses, incurred as a result of vacating your seat, are borne by you and are not reimbursed by the Government.

(b) If volunteering delays your travel during duty hours, your agency will charge you with annual leave for the additional hours.

§ 301–10.124 When may I use a reduced group or charter fare?

You may use a reduced group or charter fare when your agency has determined, on an individual case basis before your travel begins, that use of such a fare is cost effective. Chartered aircraft are subject to the same rules as Government aircraft, and agencies in the executive branch of the Federal Government are subject to the requirements of Office of Management and Budget (OMB) Circular A–126 and 41 CFR part 102–33 in making such cost effectiveness determinations.

§§ 301–10.125 [Removed and Reserved]

■ 25. Remove and reserve § 301–10.125.

§§ 301–10.126 through 301–10.129 [Reserved]

■ 26. Add reserved §§ 301–10.126 through 301–10.129.

§ 301–10.130 [Reserved]

■ 27. Add reserved § 301–10.130 after the undesignated center heading “Use of United States Flag Air Carriers”.

§§ 301–10.144 through 301–10.159 [Reserved]

■ 28. Add reserved §§ 301–10.144 through 301–10.159.

■ 29. Revise §§ 301–10.160 and 301–10.161 to read as follows:

§ 301–10.160 When may I use extra-fare train service?

You may use extra-fare train service whenever your agency determines it is more advantageous to the Government or is required for security reasons. Use of extra-fare train service must be authorized or approved as other than coach class accommodations as provided in §§ 301–10.103(b) and 301–10.103(c).

§ 301–10.161 When may I use sleeping accommodations aboard train service?

You may use the lowest class of sleeping accommodations aboard a train that meets your mission needs when overnight travel is required and your agency determines it is advantageous to the Government.

§§ 301–10.162 through 301–10.164 [Removed and Reserved]

■ 30. Remove and reserve §§ 301–10.162 through 301–10.164.

§§ 301–10.165 through 301–10.179 [Reserved]

■ 31. Add and reserve §§ 301–10.165 through 301–10.179.

■ 32. Revise § 301–10.180 to read as follows:

§ 301–10.180 Must I travel by a U.S. flag ship?

Yes, when authorized to travel by ship you must use a U.S. flag ship when one is available unless the necessity of the mission requires the use of a foreign ship. (See 46 U.S.C. 55302).

§§ 301–10.182 and 183 [Removed and Reserved]

■ 33. Remove and reserve §§ 301–10.182 and 301–10.183.

§§ 301–10.184 through 301–10.189 [Reserved]

■ 34. Add and reserve §§ 301–10.184 through 301–10.189.

PART 301–11—PER DIEM EXPENSES

■ 35. The authority citation for 41 CFR part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

■ 36. Amend § 301–11.20 by revising paragraph (a) and adding Note 1 to read as follows:

§ 301–11.20 May my agency authorize a rest period for me while I am traveling?

(a) Your agency may authorize a rest period not in excess of 24 hours at either an intermediate point or at your destination when:

(1) Either your origin or destination is OCONUS;

(2) Your scheduled flight time, including stopovers, exceeds 14 hours;

(3) Travel is by a direct or usually traveled route; and

(4) Travel is by coach class or premium economy class.

* * * * *

Note 1 to § 301–11.20: Your agency may authorize a rest period that exceeds 24 hours

when no scheduled transportation service departs within 24 hours of your arrival at an intermediate point. To qualify for a rest period exceeding 24 hours, you must be scheduled to board the first available scheduled departure. Your agency will determine a reasonable additional length of time for any rest period exceeding 24 hours.

■ 37. Amend § 301–11.26 by revising the table to read as follows: in the second row of the second column of the table by removing “SP&P/Allowances Branch” and adding “Policy and Regulations Division” in its place, and by removing “Suite 04J325–01” and adding “Suite 04J25–01” in its place.

For CONUS locations	For non-foreign area locations	For foreign area locations
General Services Administration, Office of Government-wide Policy, 1800 F St. NW, Washington, DC 20405.	Defense Travel Management Office, Attn: Policy and Regulations Division, 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350–9000.	Director, Office of Allowances, Department of State, Annex 1, Suite L–314, Washington, DC 20522–0103.

PART 301–13—TRAVEL OF AN EMPLOYEE WITH SPECIAL NEEDS

■ 38. The authority citation for 41 CFR part 301–13 continues to read as follows:

Authority: 5 U.S.C. 5707.

■ 39. Amend § 301–13.3 by revising the introductory paragraph and paragraph (f) to read as follows:

§ 301–13.3 What additional travel expenses may my agency pay under this part?

Your agency approving official may pay for any expenses deemed necessary by your agency to accommodate your special need including, but not limited to, the following expenses:

* * * * *

(f) Other than coach class accommodations to accommodate your special need, under subpart B of part 301–10 of this subchapter; and

* * * * *

PART 301–53—USING PROMOTIONAL MATERIAL AND FREQUENT TRAVELER PROGRAMS

■ 40. The authority citation for part 301–53 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 301–53.4 [Amended]

■ 41. Amend § 301–53.4 by removing “§§ 301–10.109 and 301–10.110” and adding “§§ 301–10.113 and 301–10.114” in its place.

■ 42. Revise § 301–53.5 to read as follows:

§ 301–53.5 Are there exceptions to the mandatory use of contract City Pair Program fares and an agency’s travel management service?

Yes, the exceptions are in accordance with §§ 301–10.111 and 301–10.112 of this chapter for the mandatory use of a contract City Pair Program fare, and § 301–73.103 of this chapter for the mandatory use of a travel management service.

§ 301–53.6 [Amended]

■ 43. Amend § 301–53.6 by removing “§ 301–10.116” and “§ 301–10.117” and adding “§ 301–10.122” and “§ 301–10.123” in their places, respectively.

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 44. The authority citation for part 301–70 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701, note); OMB Circular No. A–126, revised May 22, 1992; OMB Circular No. A–123, Appendix B, revised January 15, 2009.

■ 45. Amend § 301–70.102 by revising paragraphs (b)(1) and (3), (d), (i), and (k) to read as follows:

§ 301–70.102 What governing policies must we establish for authorization and payment of transportation expenses?

* * * * *

(b) * * *

(1) Use of other than coach class transportation under § 301–10.103 of this chapter;

* * * * *

(3) Use of an extra-fare train service under § 301–10.160;

* * * * *

(d) When you consider the use of a POV advantageous to the Government, such as travel to and from common carrier terminals or to the TDY location. When determining whether the use of a POV to a TDY location is the most advantageous method of transportation, you must consider the total cost of using a POV as compared to the total cost of using a rental vehicle, including rental costs, fuel, taxes, parking (at a common carrier terminal—not to exceed the cost of taxi or transportation network company fare, etc.), and any other relevant costs;

* * * * *

(i) Develop and issue internal guidance on what specific mission criteria justify use of other than coach class transportation under § 301–

10.103(a)(9) and the use of other than the least expensive compact car available under § 301–10.450(c). The justification criteria shall be noted on the traveler’s authorization.

* * * * *

(k) Develop and publish internal guidance regarding when coach class seating upgrade fees will be authorized as advantageous to the Government and reimbursed (see § 301–10.121).

■ 46. Amend § 301–70.401 by revising paragraph (a) to read as follows:

§ 301–70.401 What governing policies and procedures must we establish regarding travel of an employee with a disability or special need?

* * * * *

(a) Who will determine if an employee has a disability or special need which requires accommodation, including when documentation is necessary under §§ 301–10.103 and 301–10.121, and when a determination may be based on a clearly visible and discernible physical condition; and

* * * * *

PART 301–71—AGENCY TRAVEL ACCOUNTABILITY REQUIREMENTS

■ 47. The authority citation for 41 CFR part 301–71 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

■ 48. Amend § 301–71.105 by revising to read as follows:

§ 301–71.105 Must we issue a written travel authorization in advance of travel?

Yes, except when advance written authorization is not possible or practical and approval is in accordance with §§ 301–2.1, 301–2.5, or 304–3.13. However, the following always require advance written authorization:

(a) Use of reduced fares for group or charter arrangements;

(b) Payment of a reduced rate per diem;

- (c) Acceptance of payment from a non-Federal source for travel expenses (see chapter 304 of this title); and
- (d) Travel expenses related to attendance at a conference.

Appendix C to Chapter 301

- 49. Amend appendix C to chapter 301 by—
 - a. Revising the entry for “Transportation Method Indicator” in the table for “Commercial Transportation Information”; and
 - revising the entry for “Transportation

Method Indicator” in the table “Travel Expense Information”. The revisions read as follows:

Appendix C to Chapter 301—Standard Data Elements for Federal Travel [Traveler Identification]

* * * * *

COMMERCIAL TRANSPORTATION INFORMATION

Group name	Data elements	Description
Transportation Method Indicator	Air (other than coach class) Air (coach class). Non-contract Air, Train, Other.	Common carrier used as transportation to TDY location.

TRAVEL EXPENSE INFORMATION

Group name	Data elements	Description
Transportation Method Indicator	Air (other than coach class) Air (coach class). Non-contract Air, Train. Other	The amount of money the transportation actually cost the traveler, entered according to method of transportation. Bus or other form of transportation.

PART 304–3—EMPLOYEE RESPONSIBILITY

- 50. The authority citation for part 304–3 continues to read as follows:
Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.
- 51. Revise § 304–3.9 to read as follows:

§ 304–3.9 May I use other than coach class accommodations on common carriers when a non-Federal source pays in full for my common carrier expenses to attend a meeting?

Yes, you may use other than coach class accommodations on common carriers if you meet one of the criteria contained in § 301–10.103 of this title, and are authorized to do so by your agency in accordance with § 304–5.5 of this chapter.

PART 304–5—AGENCY RESPONSIBILITIES

- 52. The authority citation for 41 CFR part 304–5 continues to read as follows:
Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.
- 52. Amend § 304–5.5 by revising the section heading, introductory text, and paragraph (c) to read as follows:

§ 304–5.5 May we authorize an employee to use other than coach class accommodations on common carriers if we accept payment in full from a non-Federal source for such transportation expenses?

Yes, you may authorize an employee to use other than coach class accommodations on common carriers as long as the:

* * * * *

- (c) Travel meets at least one of the conditions in § 301–10.103 of this title.

[FR Doc. 2022–03068 Filed 3–2–22; 8:45 am]
BILLING CODE 6820–14–P

ACTION: Proposed rule; availability of draft recovery plan and request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify (downlist) the relict darter (*Etheostoma chienense*) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). The relict darter is a fish species that occupies the Bayou de Chien stream system in western Kentucky. Our evaluation of the best available scientific and commercial information indicates that the species’ status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range, but that it is still likely to become so in the foreseeable future. We also propose a rule under section 4(d) of the Act that provides for the conservation of the relict darter. In addition, we announce the availability of the draft recovery plan for the relict darter. The draft recovery plan includes specific recovery objectives and criteria based on the species status assessment. We request review of this proposal and of the draft recovery plan and comment from local, State, and Federal agencies, nongovernmental organizations, Tribes, and the public.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2021–0093; FF09E22000 FXES1113090FEDR 223]

RIN 1018–BF56

Endangered and Threatened Wildlife and Plants; Reclassification of the Relict Darter From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

DATES: We will accept comments received or postmarked on or before May 2, 2022. 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 April 18, 2022.

ADDRESSES:

Written comments: 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-R4-ES-2021-0093, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the 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-R4-ES-2021-0093, 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).

Availability of supporting materials: This proposed rule and supporting documents, including the 5-year review, the draft recovery plan, and the species status assessment (SSA) report, are available at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2021-0093.

FOR FURTHER INFORMATION CONTACT: Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office, 330 West Broadway, Suite 265, Frankfort, KY 40601; telephone 502-695-0468. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants reclassification from endangered to threatened if it no longer meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range). The

relict darter (*Etheostoma chienense*) is listed as endangered, and we are proposing to reclassify (downlist) the relict darter as threatened because we have determined it is not currently in danger of extinction throughout all or a significant portion of its range. Reclassifying a species as a threatened species can be completed only by issuing a rulemaking.

What this document does. This rulemaking proposes to reclassify the relict darter from endangered to threatened (*i.e.*, to "downlist" the species), with a rule issued under section 4(d) of the Act (hereafter "a 4(d) rule"), based on the species' current status, which has been improved through implementation of conservation actions. This document also announces the availability of the draft recovery plan for the relict darter.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We may reclassify a species if the best available commercial and scientific data indicate the species no longer meets the applicable definition in the Act. We have determined that the relict darter is no longer in danger of extinction throughout all or a significant portion of its range and, therefore, does not meet the definition of an endangered species. However, it is still affected by the following current and ongoing threats to the extent that the species meets the definition of a threatened species under the Act:

- Habitat destruction and modification caused by sedimentation, stream channelization, removal of riparian vegetation, drainage of riparian wetlands, and point and nonpoint source discharges.
- Drought, accidental spills, and catastrophic events.
- Low genetic diversity resulting in reduced adaptive capacity and the inability to withstand stochastic disturbances.
- Effects from climate change that are likely to exacerbate the impacts of drought, hurricanes, and flooding associated with storms and hurricanes in the future.

Proposed section 4(d) rule. Under section 4(d) of the Act, we propose to prohibit all take of the relict darter and

specifically tailor the incidental take exceptions under section 9(a)(1) of the Act to the species to provide protective mechanisms to State and Federal partners so that they may continue with certain activities that are not anticipated to cause direct injury or mortality to the relict darter and that will facilitate the conservation and recovery of the species.

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 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 reclassify the relict darter as a threatened species.

(2) New information on the historical and current status, range, distribution, and population size of the relict darter.

(3) New information on the known and potential threats to the relict darter, including the species' ability to survive catastrophic events, sediment and pollution tolerance, and potential impacts of low effective population size and low genetic diversity.

(4) New information regarding the life history, ecology, and habitat use of the relict darter.

(5) Current or planned activities within the geographic range of the relict darter that may have adverse impacts or beneficial effects on the species.

(6) Information on regulations that are necessary and advisable to provide for the conservation of the relict darter and that the Service can consider in developing a 4(d) rule for the species.

(7) Information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether any other forms of take should be exempted from the prohibitions in the 4(d) rule.

(8) We also request comments on the draft recovery plan, which is a separate effort from the proposed rulemaking.

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 proposed rule to reclassify the relict darter without providing supporting information, although noted, will not be

considered in making a determination on the reclassification, 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 and draft recovery plan 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 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 instead of being reclassified as threatened, or we may conclude that the species no longer warrants listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with the conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION**

CONTACT. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers within the range of the species 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).

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the relict darter. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994), our August 22, 2016, Director's Memo on the Peer Review Process, and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012), we solicited independent scientific reviews of the information contained in the relict darter SSA report. We sent the SSA report to three independent peer reviewers and received three responses. Results of this structured peer review process can be found as part of the docket at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2021-0093. The SSA report was also submitted to our Federal and State partners for scientific review. We received review comments from four partners, including the Kentucky Department of Fish and Wildlife Resources (KDFWR), the Office of Kentucky Nature Preserves (OKNP), the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), and The Nature Conservancy (TNC). In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the final SSA report, which is the foundation for this proposed rule and the draft recovery plan.

Previous Federal Actions

The relict darter was proposed for listing as an endangered species on December 11, 1992 (57 FR 58774). On December 27, 1993 (58 FR 68480), we

finalized the listing as endangered due to impacts from water quality and habitat deterioration resulting from stream channelization, siltation contributed by poor land use practices, and water pollutants. Designation of critical habitat was found to be not prudent based on the determination that a critical habitat designation was unlikely to benefit the relict darter and that designation of critical habitat could further threaten the species by exposing the species to increased collection and threat of vandalism.

On July 31, 1994, we published a technical/agency draft recovery plan for the relict darter, which was not finalized. In 2019, as part of the Department of the Interior's agency priority goal effort, we initiated preparation of a revised draft recovery plan for the relict darter. The current draft (Service 2020b, entire) is available for review at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2021-0093.

We have completed two 5-year reviews for the relict darter. In the August 9, 2013, 5-year review, we concluded that no change in relict darter status was warranted. However, the August 30, 2019, our 5-year review recommended downlisting the relict darter from endangered to threatened status based on population size, evidence of reproduction, discovery of a new population, and improved habitat conditions.

Proposed Reclassification Determination

Background

A thorough review of the relict darter's taxonomy, life history, and ecology is presented in the SSA report (Service 2020a, pp. 8–15) and is summarized below.

Species Information

The relict darter is a small, narrowly endemic, benthic fish that occupies the Bayou de Chien stream system in western Kentucky. It can be distinguished from other darters by the number of dorsal fin rays (bony or cartilaginous spines of first and second fins along top of body), its breeding behavior (egg-clustering with parental care), and the color and morphology of the dorsal fins of breeding males. Females and nonbreeding males have light-tan-colored backs and sides, with brown mottling and six to eight dark brown saddles. They have white, unmarked undersides. Breeding males have gray to dark brown sides and backs and light tan undersides (Page et al. 1992, p. 628).

Taxonomy

The relict darter, *Etheostoma chienense*, is a member of the Class Actinopterygii (ray-finned fishes), Order Perciformes, Family Percidae (perches), and Tribe Etheostomatini (darters) (Etnier and Starnes 1993, pp. 18–25, 440–441). The relict darter was first discovered in the Bayou de Chien system in 1975 (Webb and Sisk 1975), reported as *E. squamiceps*, but it was not recognized as a distinct species and described until 1992.

Genetics

A population bottleneck and subsequent genetic drift likely explain the species' low genetic diversity and low effective population size, which is estimated at a mean of 221.5 individuals, lower than what is usually sufficient (500) to retain a species' evolutionary potential (Soule 1980, pp. 151–169; Kattawar and Piller 2020, entire). Agricultural expansion within the Bayou de Chien system during the early to mid-20th century, including widespread channelization and straightening of stream channels, likely led to a sharp reduction in the size of the relict darter population. Populations have likely stabilized some over time, but the effects of a population bottleneck and subsequent genetic drift appears to have led to low levels of genetic diversity across the range. Recent field surveys (2010–2019) suggest that relict darters in Little Bayou de Chien are isolated from the rest of the system; however, analyses indicate a single panmictic population, where random mating occurs among all individuals in the Bayou de Chien system (*i.e.*, individuals can interbreed without restrictions) (Kattawar and Piller 2020, entire).

Distribution

The relict darter's historical range included the Bayou de Chien stream system, a 554-kilometer² (km²) (214-mile² (mi²)) watershed located within the Mississippi Valley Loess Plains ecoregion (Woods et al. 2002, entire) in Fulton, Graves, and Hickman Counties, Kentucky (Webb and Sisk 1975, entire; Warren et al. 1994, entire; Piller and Burr 1998, entire). Bayou de Chien is a low-gradient, sand, gravel, and silt-bottomed stream that begins in southwestern Graves County and flows westward approximately 47 km (29.2 mi) through Hickman and Fulton Counties, before ultimately emptying into Obion Creek near Hickman, Kentucky. All but the terminal 8–10 km (5.0–6.2 mi) of Bayou de Chien have been subjected to extensive

channelization, and the dominant land use is row-crop agriculture (Webb and Sisk 1975, p. 63). Currently, the relict darter continues to occupy portions of the Bayou de Chien system in Fulton, Graves, and Hickman counties, Kentucky. The species is represented by two geographically isolated populations: Bayou de Chien/Jackson Creek and Little Bayou de Chien (Service 2020a, p. 20).

Habitat

The species typically occupies slow-flowing runs, glides, or pools of small to medium-sized, lowland streams with sand and gravel substrates. In these habitats, the species is most commonly observed near cover, such as undercut banks, woody debris piles, or snags. An abundance of woody debris provides a sufficient supply of spawning substrates and, consequently, the highest mean densities of the species (Service 2020a, p. 10).

Biology

The species feeds primarily on midge larvae and other small invertebrates. Spawning occurs from mid-March to early June, and the species has a maximum lifespan of 3 to 4 years. Like all members of the *Etheostoma squamiceps* complex, females deposit eggs on the undersides of submerged objects, and egg clusters are guarded by the male until hatching occurs (Service 1994, p. 7). During a 1999 survey, most nests were located on natural materials such as small rocks, woody debris, and live tree roots, but 37 percent of nests were found on anthropogenic materials such as rubber tires, plastic, roof shingles, glass, concrete blocks, metal road signs, and concrete slabs (Piller and Burr 1999, pp. 147–151).

The species was characterized as uncommon or rare at most collection sites in the 1990s, generally consisting of 1–23 individuals per site (Piller and Burr 1998, pp. 66–71). Recent surveys indicate the species continues to be rare in some reaches but is more common in others. Generally, the greatest number of darters per sampling reach and the highest mean densities (0.43 darters/square meter) have been observed in Jackson Creek and an approximately 22.6-km (14.1-mi) reach of Bayou de Chien (0.30 darters/square meter), extending from just downstream of the U.S. 51 bridge crossing in Hickman County upstream to the Pea Ridge Road bridge crossing in Graves County (Service 2020a, Appendix A).

Recovery Criteria From Draft Recovery Plan (2020)

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the Lists of Endangered and Threatened Wildlife and Plants.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The revised draft recovery plan for the relict darter (Service 2020b, p. 4) states that the goal of the recovery plan is to ensure the long-term viability of the relict darter in the wild to the point that it can be removed from the Federal List of Endangered and Threatened Wildlife. The draft plan provides two recovery/delisting criteria for the relict darter. Both of the recovery criteria have been partially met. The following discussion provides an assessment of the recovery criteria as they relate to evaluating the status of this species. We are seeking review and comment of the draft recovery plan from local, State, and Federal agencies, nongovernmental organizations, Tribes, and the public (see **ADDRESSES** and reference Docket No. FWS-R4-ES-2021-0093).

Recovery Criterion 1

Criterion 1 states that relict darter populations occupying at least five streams, including the Bayou de Chien mainstem, Jackson Creek, Little Bayou de Chien, South Fork Bayou de Chien, and one other Bayou de Chien tributary exhibit stable or increasing population trends, natural recruitment, and multiple age classes.

Populations that exhibit a stable or increasing trend, natural recruitment, and multiple age classes have higher resiliency and are better able to withstand stochastic disturbance. The presence of sufficiently resilient populations in multiple tributaries increases the species' redundancy, thereby reducing its vulnerability to catastrophic events. Conservation of existing relict darter populations in the Bayou de Chien and Little Bayou de Chien watersheds will also help to maintain the species' current representation, which although currently low, maintenance will therefore not reduce the species' ability to adapt to changing environmental conditions.

The Bayou de Chien/Jackson Creek population of relict darter occupies at least six streams, including Bayou de Chien, Jackson Creek, Little Bayou de Chien, South Fork Bayou de Chien, Cane Creek, and Sand Creek (Service 2020a, p. 20). However, only two of these streams have exhibited stable or increasing population trends, recruitment, and multiple age classes—Jackson Creek and Bayou de Chien. Recent surveys (2017–2018) indicate that estimates of relict darter abundance, mean density, and population size continue to be greatest in Jackson Creek and middle to headwater reaches of Bayou de Chien (Service 2020a, pp. 35–36). There is also evidence of reproduction and

recruitment in Bayou de Chien and Jackson Creek streams, and these trends have remained relatively constant or have improved based on surveys completed in the past decade (Service 2019, p. 22). Therefore, we conclude that this recovery criterion has been partially met.

Recovery Criterion 2

Criterion 2 states that threats have been addressed and/or managed in these watersheds to the extent that the species will maintain resiliency into the foreseeable future.

Under this criterion, cooperative conservation efforts by the Service and its partners will reduce existing threats posed by habitat disturbance, range curtailment, and past inadequate regulatory mechanisms. These threats must be reduced to the extent that there is a reasonable expectation the species will maintain resiliency into the foreseeable future. Evidence of threat reduction will be demonstrated by the species' improved resiliency and redundancy across its range.

Since 2002, we have worked with multiple agencies and private partners (e.g., NRCS, KDFWR, and TNC) to implement conservation actions for the relict darter in the Bayou de Chien system (Service 2020a, p. 29). Our Partners for Fish and Wildlife (PFW) Program has taken the lead role in this effort by providing technical and financial assistance to agencies and numerous private landowners. PFW biologists have focused their efforts on the use of best management practices (BMPs) and instream conservation practices that enhance and restore riparian habitats and the instream habitats used by the relict darter. PFW projects have included a culvert removal in the headwaters of Bayou de Chien, installation of livestock alternate watering systems, placement of artificial spawning structures in Bayou de Chien and Jackson Creek, installation of livestock exclusion fencing along several km of Bayou de Chien and Jackson Creek, and restoration of over 20.2 hectares (50 acres) of native grasses and wildflowers within riparian areas. In addition to these efforts, PFW biologists have provided over 10 years of technical assistance to the U.S. Department of Agriculture, Wetland Reserve Easement Program, for projects within the Bayou de Chien system (Radomski 2019, pers. comm.).

While some of the stream habitats within the Bayou de Chien watershed have improved since the time of the listing of the relict darter, the improvements are often localized, and several threats remain. The species

continues to be impacted by sedimentation, pollution, a limited range and linear distribution, and low genetic diversity (Service 2020a, pp. 37–38). Therefore, we consider this recovery criterion to be partially met.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an “endangered species” or a “threatened species.” The Act defines an endangered species as a species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an “endangered species” or a “threatened species” because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could affect a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in reclassifying a species from endangered to threatened (50 CFR 424.11(c)–(e)).

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory

definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the species’ expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species’ likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species,

including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be reclassified as a threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess relict darter viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain its populations over time, even under changing environmental conditions. Using these principles, we identified the species’ ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species’ viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the species’ ecological and life-history needs. The next stage involved an assessment of the historical and current condition of the species’ demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species’ responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of the species to sustain its populations in the wild over time. We use this information to inform our regulatory decision. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R4–ES–2021–0093 on <https://www.regulations.gov>.

Summary of Biological Status and Threats

In this section, we review the biological condition of the species and

its resources, and we evaluate threats influencing the species’ current and future condition. These assessments allow us to assess the species’ overall viability and the risks to that viability.

Factors Influencing Relict Darter Viability

At the time of listing in 1993, the relict darter was known only from the Bayou de Chien mainstem and Jackson Creek, but it was later discovered in the Little Bayou de Chien in 2017 (Service 2019, p. 11). Threats to the species at the time of listing were water quality and habitat deterioration resulting from stream channelization, siltation contributed by incompatible land use practices, and water pollutants from waste discharges. Relict darter distribution was reduced by these factors, and because the species was known to inhabit only limited areas and known to spawn in only one small tributary, it was deemed vulnerable to extirpation from toxic chemical spills (58 FR 68481, December 27, 1993). Additionally, because of its small population size, the species’ long-term genetic viability was determined questionable at the time of listing.

While the relict darter’s viability has improved over time (see Conservation Efforts), three major factors are influencing the viability of the species now and are expected to affect it into the future: Habitat loss and degradation, restricted range/isolation, and climate change. Habitat loss and degradation resulting from siltation, channelization/riparian vegetation removal, drainage of riparian wetlands, and water quality degradation (pollution) (Factor A) pose the largest risk to the current and future viability of the relict darter. Other potential stressors to the species are the restricted range of the species and climate change (Factor E). We find the species does not face threats from overutilization (Factor B), disease or predation (Factor C), or invasive species (Factor E). A brief summary of relevant stressors is presented below; for a full description, refer to chapter 3 of the SSA report (Service 2020a, entire).

Siltation

Siltation is the process whereby excess sediments are suspended or deposited in a stream. Excessive levels of sediment accumulate and cover the stream bottom, filling the interstitial spaces with finer substrates and homogenizing and decreasing the available habitat for fishes. In severe cases, sediment can bury larger substrate particles such as gravel and cobble, as well as woody debris. Siltation can abrade or suffocate fish

gills, eggs, and larvae; reduce disease tolerance; degrade or destroy spawning habitats, affecting egg, larval, and juvenile development; modify migration patterns; reduce food availability through the blockage of primary production; and reduce foraging efficiency (Berkman and Rabeni 1987, pp. 285–294; Waters 1995, pp. 5–7; Wood and Armitage 1997, pp. 211–212; Meyer and Sutherland 2005, pp. 2–3). Thus, siltation is a threat to all life stages of relict darter. In addition, relict darter spawning substrates are usually the undersides of fixed objects (*e.g.*, wood, tree roots, cobble, tires) and are vulnerable to the effects of siltation (*i.e.*, embeddedness, or being completely covered in sediment) (Service 2020a, p. 14).

Sediment (siltation) is one of the most common stressors of aquatic communities in the Bayou de Chien system (Kentucky Division of Water (KDOW) 2018, pp. 43–45). The primary sources of sediment are agriculture (crop production) and habitat impacts (channel erosion/incision from upstream hydromodifications, dredging, and loss of riparian habitat). The Bayou de Chien system is extensively farmed (*e.g.*, row crops and livestock), and a large portion of the system has been deforested. These land use practices result in a high silt load within the system that continues to degrade habitats and impact the species. Croplands have the potential to contribute large sediment loads during storm events, thereby causing increased siltation and potentially introducing harmful agricultural pollutants such as herbicides and pesticides. Unrestricted livestock access to streams has the potential to cause siltation and other habitat disturbance (Fraley and Ahlstedt 2000, pp. 193–194). Grazing may reduce water infiltration rates and increase stormwater runoff; trampling and vegetation removal increase the probability of erosion and siltation (Brim Box and Mossa 1999, p. 103). Physical habitat disturbance from sedimentation is less common in Jackson Creek than in other portions of the Bayou de Chien system.

Several streams within the Bayou de Chien system have been identified as impaired due to siltation and have been included by the State of Kentucky on its list of impaired waters required under section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)) (KDOW 2018, pp. 43–45). Portions of several streams occupied by the relict darter are on this list, including Cane Creek (stream km 0–8.5 (stream mi 0–5.3)) in Hickman County, Little Bayou de Chien (stream km 1.8–3.8 and 18.8–22.5 (stream mi

1.1–2.4 and 11.7–14.0)) in Fulton and Hickman Counties, and South Fork Bayou de Chien (stream km 0–12.6 (stream mi 0–7.8)) in Graves County.

Channelization/Riparian Vegetation Removal

Stream channelization is a common practice used to reduce the effects of flooding, increase the drainage rate of agricultural land, and maximize the amount of tillable land (Piller and Burr 1998, p. 65). These modified channels are often managed through vegetation removal and dredging to improve flood conveyance or through placement of quarried stone or gabion baskets to protect against bank erosion (Allan and Castillo 2007, p. 327).

Historically, Bayou de Chien was presumably a free-flowing stream with alternating areas of riffles, runs, and pools. Since that time, many stream reaches within the system have been channelized and converted to deep ditches with uniform depth, velocity, and substrate (Piller and Burr 1998, p. 71). Channelization has impacted the Bayou de Chien system by changing stream flow patterns including reducing instream flows (especially during drier periods) that stress relict darters, decreasing aquatic habitat complexity, which affects sheltering and feeding for relict darters, and reducing stream bank and floodplain (riparian) vegetation (Piller and Burr 1998, p. 71), which affects relict darter feeding and breeding resource needs. Channelized reaches have higher stream velocities and shear stress (a measure of the force of water against the channel boundary) during high flow periods (which leads to channel instability and bank erosion), less instream cover and habitat for aquatic organisms including relict darter (decreased habitat complexity), less riparian vegetation and correspondingly reduced canopies (reduced shade and reduced woody debris input), and below normal flows during drier periods (Warren et al. 1994, p. 24; Piller and Burr 1998, p. 71). Thus, the relict darter is susceptible to impacts from channelization and reductions in riparian vegetation because these stressors affect flows, habitat complexity, and instream temperatures and reduce the amount of woody material, thus affecting sheltering and reproduction needs of the species.

The reduction or loss of riparian vegetation contributes to siltation through bank destabilization and the removal of submerged root systems that help to hold sediments in place while providing habitat for relict darters and their macroinvertebrate prey (Barling and Moore 1994, p. 544; Beeson and

Doyle 1995, p. 989; Allan 2004, p. 262; Hauer and Lamberti 2006, pp. 721–723; Minshall and Ruginski 2006, pp. 721–723). Removal of riparian vegetation can also reduce the stream's capacity for trapping and removing contaminants and nutrients from runoff; increase solar exposure, resulting in higher water temperatures; increase algal abundance (primary production); and reduce inputs of woody debris and leaf litter, thereby reducing food sources for relict darters and lowering overall stream production (Brazier and Brown 1973, p. 4; Karr and Schlosser 1978, p. 231; Peterjohn and Correll 1984, p. 1473; Osborne and Kovacic 1993, p. 255; Barling and Moore 1994, p. 555; Vought et al. 1994, p. 346; Allan 1995, p. 109; Wallace et al. 1999, p. 429; Pusey and Arthington 2003, p. 4). Where a reduction or loss of riparian vegetation occurs, these impacts negatively affect the quality of habitat available to the relict darter for breeding, feeding, and sheltering.

Drainage of Riparian Wetlands

With increased agricultural activity in the Bayou de Chien basin over the last century, much of the basin's vegetation has been cleared, and many riparian wetlands have been drained to make additional lands available for farming (Piller and Burr 1998, p. 65). This situation has caused an overall reduction in the groundwater level and base flows within Bayou de Chien and its tributaries. Many small streams in the system have completely dried or consisted of isolated pools by the early fall months (Warren et al. 1994, p. 24). These conditions serve to isolate populations and subject both the adult and juvenile relict darters to increased pressure from predators (Service 1994, p. 14). Dispersal of the species upstream of the Jackson Creek area or into many downstream tributaries may be limited by instream flow conditions (Warren et al. 1994, p. 24).

Water Quality Degradation (Pollution)

Information is lacking on the relict darter's tolerance to specific pollutants, but a variety of contaminants continue to degrade stream water quality within the Bayou de Chien drainage, and these pollutants may affect the relict darter. Several point-source and nonpoint-source pollutants to aquatic life occur in the Bayou de Chien (Service 2020a, Appendix B) (KDOW 2018, pp. 43–45). These pollutants include copper, iron, lead, excess nutrients (total nitrogen and phosphorus), and eutrophication originating from two suspected sources—municipal point source discharges (*e.g.*, sewage treatment) and agriculture (*e.g.*, crop production and

animal feeding operations). Portions of four streams that are occupied by relict darter, specifically Bayou de Chien, Cane Creek, Little Bayou de Chien, and South Fork Bayou de Chien, were identified as impaired due to these pollutants (KDOW 2018, pp. 43–45). The impacts of copper, lead, and iron inputs are unknown, but nutrient inputs and eutrophication can lead to excessive algal growths and instream oxygen deficiencies that can seriously impact aquatic species, including the relict darter.

Currently, 13 National Pollutant Discharge Elimination System permits have been issued authorizing the discharge of pollutants within portions of the Bayou de Chien system (Fredenberg 2018, pers. comm.; Service 2020a, p. 27). Two sewage treatment plants, the City of Fulton Treatment Works (Kentucky Pollutant Discharge Elimination System (KPDES) #KY0026913) and the Hickman East Sewage Treatment Plant (KPDES #KY0028436), discharge treated wastewater directly into Bayou de Chien. Between January 2010 and April 2020, the Fulton facility received 13 violation notices from KDOW. The notices were issued for permit exceedances of a variety of chemical parameters (e.g., Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), pH) and for failures to meet certain monitoring requirements associated with the permit (Service 2020a, Appendix C). Insufficient treatment of wastewater could harm relict darter populations by introducing pollutants (e.g., metals, bacteria) and altering water quality conditions (e.g., decreased oxygen levels, elevated pH).

The Bayou de Chien system is also affected by nonpoint-source pollutants, arising from a variety of diffuse sources. Examples of nonpoint-source pollutants include sediment (e.g., stormwater runoff from driveways, fields, construction sites), raw sewage (e.g., septic tank leakage, straight pipe discharges), animal waste from livestock, fertilizers, pesticides, herbicides, and road salt (KDOW 2013, pp. 19–21; KDOW 2018, pp. 43–45). Nonpoint-source pollutants can cause excess nitrification (increased levels of nitrogen and phosphorus), excessive algal growths that clog the waterway and affect swimming capability and visual predation, instream oxygen deficiencies that affect oxygen intake by relict darters, and other changes in water chemistry that can impact aquatic species such as the relict darter. Nonpoint-source pollution from land surface runoff can originate from virtually any land use activity and has

been correlated with impervious surfaces and storm water runoff (Allan 2004, pp. 266–267). Pollutants may include sediments, fertilizers, herbicides, pesticides, animal wastes, septic tank and gray water leakage, pharmaceuticals, and petroleum products. These pollutants tend to increase concentrations of nutrients and toxins in the water and alter the chemistry of affected streams such that the habitat and food sources for species like the relict darter are negatively impacted.

Due to its linear distribution within the Bayou de Chien mainstem and Jackson Creek, the relict darter continues to be vulnerable to accidental chemical or animal waste spills and releases that may result from traffic accidents, agricultural activities, or permitted discharges (Warren et al. 1994, p. 24). Events of this kind have affected other aquatic communities in the Southeastern United States during the recent past (Ahlstedt et al. 2016, pp. 8–9), so similar events have the potential to affect relict darter populations in the Bayou de Chien system. These events could have devastating effects on darters in these reaches (Piller and Burr 1996, p. 74) and could pose a threat to the long-term viability of the species.

Restricted Range/Isolation

The relict darter has always had a limited geographic range, currently consisting of approximately 52.5 stream km (32.7 stream mi) within a single stream system in western Kentucky (Bayou de Chien system). The species was characterized as uncommon or rare at most collection sites in the 1990s (Piller and Burr 1998, pp. 66–71), and recent surveys indicate the species continues to be rare in some reaches but is more common in others.

The species' restricted range and low abundance in some reaches (e.g., Little Bayou de Chien and Cane Creek) make it more vulnerable to extirpation from toxic chemical spills, habitat modification, degradation from land surface runoff (nonpoint-source pollution), and natural catastrophic changes to their habitat (e.g., flood scour, drought). In particular, recent survey data indicate that the relict darter's most successful reproduction occurs in Jackson Creek and middle and headwater reaches of Bayou de Chien, which are vulnerable to stochastic events, such as a single toxic chemical spill or an extreme weather event such as a drought or flash flood. These events could have devastating effects on darters in these reaches (Piller and Burr 1996, p. 74) and could pose a threat to the long-term viability of the species.

The relict darter is represented by two geographically isolated populations: Bayou de Chien/Jackson Creek and Little Bayou de Chien (Service 2020a, p. 20). The fact that the Little Bayou de Chien population is small and isolated from the larger Bayou de Chien/Jackson Creek population makes it more vulnerable to stochastic and catastrophic events, thus affecting overall relict darter viability.

Climate Change

Species that are dependent on specialized habitat types, limited in distribution, or at the extreme periphery of their range may be most susceptible to the impacts of climate change (Byers and Norris 2011, pp. 18–19); however, while continued change is certain, the magnitude and rate of change is unknown in many cases. Climate change has the potential to increase the vulnerability of the relict darter to random catastrophic events (McLaughlin et al. 2002, pp. 6060–6074; Thomas et al. 2004, pp. 145–148). An increase in both severity and variation in climate patterns is expected; extreme floods, strong storms, and droughts will become more common (Cook et al. 2004, pp. 1015–1018; Ford et al. 2011, p. 2065; Intergovernmental Panel on Climate Change 2014, pp. 58–83). Frequency, duration, and intensity of droughts are likely to increase in the Southeast as a result of global climate change (Thomas et al. 2004, pp. 145–148). Stream temperatures in the Southeast have increased roughly 0.2–0.4 degrees Celsius (°C) (0.4–0.7 degrees Fahrenheit (°F)) per decade over the past 30 years, and as air temperature is a strong predictor of water temperature, stream temperatures are expected to continue to rise (Kaushal et al. 2010, p. 465). Predicted impacts of climate change on fishes include disruption to their physiology (such as temperature tolerance, dissolved oxygen needs, and metabolic rates), life history (such as timing of reproduction, growth rate), and distribution (range shifts, migration of new predators) (Jackson and Mandrak 2002, pp. 89–98; Heino et al. 2009, pp. 41–51; Strayer and Dudgeon 2010, pp. 350–351; Comte et al. 2013, pp. 627–636).

Estimates of the effects of climate change using available climate models typically lack the geographic precision needed to project the magnitude of effects at a scale small enough to discretely apply to the range of a given species. However, data on recent trends and projected changes for Kentucky (Girvetz et al. 2009, pp. 1–19), and, more specifically, the Bayou de Chien system (Alder and Hostetler 2017,

entire) provide some insight for evaluating the potential impacts of climate change to the relict darter. Different emission scenarios have been used to calculate estimates of average annual increases in maximum and minimum air temperature, precipitation, snowfall, and other variables (Alder and Hostetler 2017, entire). These scenarios, called representative concentration pathways (RCPs), are plausible pathways toward reaching a target radiative forcing (the change in energy in the atmosphere due to greenhouse gases) by the year 2100 (Moss et al. 2010, p. 752). Depending on the chosen model and emission scenario (RCP8.5 (high) vs. 4.5 (moderate)), annual mean maximum air temperatures for the Bayou de Chien system are expected to increase by 2.3–3.4 °C (4.1–6.1 °F) by 2074, while precipitation models predict that the Bayou de Chien system will experience a slight increase in annual mean precipitation (0.5 centimeters/month (0.2 inches/month)) through 2074 (Girvetz et al. 2009, pp. 1–19; Alder and Hostetler 2016, pp. 1–9).

There is uncertainty about the specific effects of climate change (and their magnitude) on the relict darter; however, climate change is almost certain to affect aquatic habitats in the Bayou de Chien system of western Kentucky through increased water temperatures and more frequent droughts (Alder and Hostetler 2017, entire), and species with limited ranges, fragmented distributions, and small population size, such as the relict darter, are thought to be especially vulnerable to the effects of climate change (Byers and Norris 2011, pp. 18–19). Thus, we consider climate change to be a threat to the relict darter.

Regulatory Mechanisms

The relict darter and its habitats are afforded some protection from water quality and habitat degradation under the Clean Water Act, Kentucky's Forest Conservation Act of 1998 (KRS §§ 149.330–355), Kentucky's Agriculture Water Quality Act of 1994 (KRS §§ 224.71–140), and additional Kentucky statutes and regulations regarding natural resources and environmental protection (KRS § 224; 401 KAR §§ 5:026, 5:031). While it is clear that the protections afforded by these statutes and regulations have not prevented the degradation of some habitats used by the relict darter, the species has undoubtedly benefited from

improvements in water quality and habitat conditions stemming from these regulatory mechanisms.

Conservation Efforts

The relict darter is listed as endangered in Kentucky (OKNP 2019, p. 16), making it unlawful to take the species or damage its habitat without a State permit. Additionally, the relict darter is identified as a species of greatest conservation need in the Kentucky Wildlife Action Plan (KDFWR 2013, Chapter 2), which outlines actions to promote species conservation.

Since listing the species, the Service has worked with multiple agencies and private partners (e.g., NRCS, KDFWR, and TNC) to implement conservation actions for the relict darter in the Bayou de Chien system. The Service's PFW Program has taken the lead role in this effort by providing technical and financial assistance to agencies and numerous private landowners. PFW has focused its efforts on the use of best management practices (BMPs) and instream conservation practices that enhance and restore riparian and instream habitats used by the relict darter. PFW projects have included a culvert removal in the headwaters of Bayou de Chien, installation of livestock alternate watering systems, placement of artificial spawning structures in Bayou de Chien and Jackson Creek, installation of livestock exclusion fencing along several kilometers of Bayou de Chien and Jackson Creek, and restoration of more than 20.2 hectares (50 acres) of native grasses and wildflowers within riparian areas. In addition to these efforts, PFW biologists have provided over 10 years of technical assistance to the U.S. Department of Agriculture, Wetland Reserve Easement Program, for projects within the Bayou de Chien system (Radomski 2019, pers. comm.). These efforts have resulted in permanent easements covering more than 1,700 acres (688 hectares) in the upper Bayou de Chien system (Morris 2020, pers. comm.). These easements will benefit the relict darter through sediment and nutrient reduction, shading of stream corridors (via riparian plantings), hydrological restoration (via plugging of agricultural ditches and improved groundwater connections), and general habitat creation, or wetland restoration.

Species Viability

For relict darter populations to be sufficiently resilient, the needs of

individuals (slow-flowing riffles and pools, appropriate substrate, food availability, water quality, and aquatic vegetation or large woody debris for cover) must be met at a larger scale. Stream reaches with suitable habitat must be large enough to support an appropriate number of individuals to avoid issues associated with small population size, such as inbreeding depression and the Allee effect (low population density reducing the probability of encountering mates for spawning). Connectivity of stream reaches allows for immigration and emigration between populations and increases the likelihood of recolonization should a population be lost. At the species level, the relict darter needs well-distributed healthy populations to withstand environmental stochasticity (resiliency) and catastrophes (redundancy) and adapt to biological and physical changes in its environment (representation). To evaluate the current and future viability of the relict darter, we assessed a range of conditions to allow us to estimate the species' resiliency, representation, and redundancy.

We delineated analytical units (populations) by dividing the relict darter's range into two units (Bayou de Chien/Jackson Creek and Little Bayou de Chien) based on known occurrence records, the substantial distance (18.3 kilometers (km) (11.4 miles (mi)) separating known occurrence records in both watersheds, and unsuitable habitat conditions in downstream reaches of both watersheds.

To assess resiliency, we evaluated four components that relate to the species' habitat or its population demography: Physical habitat, water quality, mean density, and occurrence complexity. We assessed habitat using two components describing physical habitat quality and water quality. The demographic condition was assessed using mean density and occurrence complexity. We established parameters for each condition category by evaluating the range of existing data and separating those data into categories based on our understanding of the species' demographics and habitat (table 1, below). Individual component scores were combined and averaged to produce an overall condition score for each population.

TABLE 1—COMPONENT CONDITIONS USED TO ASSESS RESILIENCY FOR RELICT DARTER POPULATIONS

Component	Condition			
	High	Moderate	Low	0
Physical Habitat ..	Silt deposition low; no extensive or significant habitat alterations (e.g., recent channelization, riparian clearing); >75% of available habitat suitable for the species.	Silt deposition moderate; habitat alterations at moderate levels—channelization or other habitat disturbance more widespread; 25–75% of available habitat suitable for the species.	Silt deposition extensive; habitats severely altered and recognized as impacting the species; <25% of habitats suitable for the species.	Habitats unsuitable (species absent).
Water Quality	Minimal or no known water quality (WQ) issues (i.e., no 303(d) streams impacting the species*).	WQ issues recognized and may impact species (i.e., 1–2 303(d) streams).	WQ issues prevalent within system, likely impacting populations (i.e., numerous 303(d) streams).	Habitat unsuitable (species absent).
Mean Density (# darters/m ²).	>0.15	0.05–0.15	<0.05	Species absent.
Occurrence Complexity.	Occupies main channel and ≥3 tributaries.	Occupies main channel and maximum of 2 tributaries.	Occupies main channel and maximum of ≤1 tributaries.	Species absent.

* Signifies streams identified by the State of Kentucky on the list of impaired streams required by section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)).

Our evaluation of representation for the relict darter was based on the species’ genetic diversity and the extent and variability of environmental diversity (habitat diversity) across the species’ geographical range. Additionally, we assessed relict darter redundancy (ability of the species to withstand catastrophic events) by evaluating the number and distribution of resilient populations throughout the species’ range. Highly resilient populations, coupled with a broad distribution throughout the historical range, have a positive relationship to species-level redundancy.

Current Conditions of the Relict Darter

The relict darter’s historical range included the Bayou de Chien stream system, a 554-kilometer² (km²) (214-mile² (mi²)) watershed located within the Mississippi Valley Loess Plains ecoregion (Woods et al. 2002, entire) in Fulton, Graves, and Hickman Counties, Kentucky (Webb and Sisk 1975, entire; Warren et al. 1994, entire; Piller and Burr 1998, entire). Bayou de Chien is a low-gradient, sand, gravel, and silt-bottomed stream that begins in southwestern Graves County and flows westward approximately 47 km (29.2 mi) through Hickman and Fulton Counties, before ultimately emptying into Obion Creek near Hickman, Kentucky. Historically, Bayou de Chien was presumably an undisturbed, free-flowing stream with alternating areas of riffles, runs, and pools; however, only a few of these reaches remain because much of the stream has been

channelized and converted to a deep ditch with uniform depth, velocity, and substrate (Piller and Burr 1998, pp. 64–65).

The relict darter’s current range is also limited to the Bayou de Chien system in Fulton, Graves, and Hickman Counties, Kentucky. Recent surveys (2010–2019) indicate that the species is now known by two geographically separated populations: Bayou de Chien/Jackson Creek and Little Bayou de Chien. Within the Bayou de Chien/Jackson Creek population, the species occupies patches of suitable habitat within a 30.4-km (18.9-mi) reach of Bayou de Chien, a 3.6-km (2.3-mi) reach of Jackson Creek, a 3.2-km (2.0-mi) reach of South Fork Bayou de Chien, a 10.4-km (6.5-mi) reach of Cane Creek, and a 2.3-km (1.4-mi) reach of Sand Creek. Within the Little Bayou de Chien population, the species occupies patches of suitable habitat within a 2.6-km (1.6-mi) reach. In total, the species currently occupies 52.5 stream km (32.7 stream mi).

The Bayou de Chien/Jackson Creek population exhibits moderate resiliency, as evidenced by recent estimates of mean density and mean population size, recent monitoring data showing evidence of reproduction and recruitment, and our observations of moderate to high physical habitat and water quality conditions within the watershed (table 2; Service 2020a, p. 35). Based on recent surveys, Jackson Creek and Bayou de Chien have moderate to high relict darter densities, with population estimates of 1,888 and

22,798 fish, respectively, indicating that the population size has more than doubled since a decade ago (Service 2019, p. 7; Service 2020a, p. 36). Resiliency of the Little Bayou de Chien population is lower due to its lower mean density and less optimal habitat conditions (table 2, below). The species was only recently discovered in the Little Bayou de Chien in July 2017. Recent survey efforts have been limited to two 100-m reaches and several qualitative searches; population size has not been estimated because of the limited quantitative effort; however, 23 relict darters were observed. Low levels of reproduction and recruitment are assumed for the Little Bayou de Chien. Overall, the range-wide mean population estimate is 24,686 relict darters (Service 2019, p. 7).

We consider redundancy and representation of the relict darter to be low due to the species’ small number of populations, its low effective population size (mean of 221.5, with a 95 percent confidence interval of 143.3–448.3), and its reduced genetic diversity (table 2; Kattawar and Piller 2020, pp. 27–28). We recognize that redundancy and representation may be inherently low for a narrow endemic like the relict darter. The fact that the species exhibits little genetic variation across its range and has a very low effective population size suggests a past population bottleneck (e.g., range-wide habitat disturbance) and subsequent genetic drift (loss of rare alleles in a small population) (Kattawar and Piller 2020, entire).

TABLE 2—3Rs (RESILIENCY, REDUNDANCY, REPRESENTATION) SUMMARY FOR RELICT DARTER

Population	Resiliency	Redundancy	Representation
Bayou de Chien/Jackson Creek Little Bayou de Chien.	Moderate Low.	Naturally Low—the species is a narrowly distributed endemic; populations appear to be separated, but connectivity exists within Bayou de Chien, Jackson Creek, and other large tributaries.	Low—low genetic diversity and low effective population size.

As a narrow endemic species located in one watershed in southwestern Kentucky, the relict darter has inherently low redundancy, with only one known population at the time of listing, and currently there are two populations. Representation is also limited based on its restricted range, yet the species has survived a likely population bottleneck, and despite low genetic diversity, genetic analyses indicate a single panmictic population, indicating some recent genetic exchange between populations. Low species redundancy and representation are tempered by the moderate resiliency of the Bayou de Chien/Jackson Creek population. This historical population continues to exhibit resiliency today, with high relict darter abundance and evidence of continued reproduction. This moderately resilient population has survived threats, primarily because conservation efforts over the past three

decades have improved habitat within the system, thus enabling the breeding, feeding, and sheltering needs of the relict darter to be met and thus sustaining the population over time.

Future Conditions

In our SSA (Service 2020a, entire), we defined viability as the ability of the species to sustain populations in the wild over time. To help address uncertainty associated with the degree and extent of potential future stressors and their impacts on the species’ needs, the concepts of resiliency, redundancy, and representation were assessed using three plausible future scenarios (continuation of current trend, improving trend, and worsening trend), using the same analytical units and components described above, in Summary of Biological Status and Threats. We devised these scenarios by identifying data sources related to the primary threats anticipated to affect the

relict darter in the future. For the habitat loss and degradation threat, we looked at land cover change and urbanization, as well as conservation activity, and we also included predicted impacts of future climate change. The three scenarios capture the range of uncertainty in the changing landscape and how relict darter will respond to the changing conditions (table 3, below). We used the best available data and models to project out 50 years into the future (*i.e.*, 2070), a timeframe where we were reasonably certain the land use change, urbanization, and climate models used could project patterns in the species’ range relevant to the relict darter and its habitat given the species’ lifespan. For each scenario, we provided a summary of resiliency for each population at 10, 30, and 50 years in the future. For more information on the models and their projections, please see the SSA report (Service 2020a, entire).

TABLE 3—FUTURE CONDITION OF THE RELICT DARTER BY THE YEARS 2030, 2050, AND 2070 UNDER THREE FUTURE SCENARIOS

Scenario	Population	Predicted future condition		
		10 Years	30 Years	50 Years
1	Bayou de Chien/Jackson Little Bayou de Chien	Moderate Low	Moderate Low	Moderate. Low.
2	Bayou de Chien/Jackson Little Bayou de Chien	Moderate Low	Moderate–High Low–Moderate	Moderate–High. Moderate.
3	Bayou de Chien/Jackson Little Bayou de Chien	Moderate Low	Low–Moderate Extirpated	Low. Extirpated.

Under Scenario 1 (continuation of current trend), small increases in urbanization were predicted by 2050 and 2070 within the watersheds of both extant populations (Service 2020a, pp. 41–43), but associated impacts on habitat and population elements were expected to be minimal. We also predicted continued implementation of conservation actions under KDFWR’s conservation strategy and through the Service’s PFW program. Using a moderate level of climate change (RCP 4.5), within the next 10 years, portions of the Bayou de Chien system were impacted by either drought or floods, with slightly warmer temperatures. Over the long term (30–50 years), drought affected all populations but at intervals

and severity levels similar to what has occurred over the last 10 years.

Considering all of these factors, we expect no change in resiliency for the two known populations; however, the low resiliency of the Little Bayou de Chien population makes it much more vulnerable to extirpation from the effects of stochastic disturbance. Under Scenario 1, both representation and redundancy of the relict darter are expected to remain at low levels. The species is limited to one low resiliency population and one moderate resiliency population, both of which occupy streams within a single ecoregion, Mississippi Valley Loess Plains. Within this ecoregion, relict darters occupy second- to fourth-order reaches, but

habitat diversity within these reaches tends to be low. The species also has low genetic diversity, which cannot be increased through augmentations, reintroductions, or other genetics-based conservation actions because genetic diversity cannot be created with a species that has a limited gene pool. The species’ low genetic diversity could potentially limit its ability to adapt to changing environmental conditions over time. Furthermore, both populations will remain vulnerable to catastrophic events, such as an extreme drought or chemical spill, because the species’ distribution is generally limited to a single, continuous stream reach within each population.

Under Scenario 2 (improving trend), we projected a number of improved conditions and positive outcomes that led to overall improved resiliency and redundancy for the relict darter. We projected both land use change and urbanization to be lower than current rates. The current trend in climate improved, with lower annual increases in temperature and less severe droughts or floods in the short term (RCP 4.5). Over the long term (30–50 years), drought affected both populations but at intervals and severity levels lower than what occurred over the last 10 years. Conservation efforts, including new efforts along occupied reaches of Little Bayou de Chien, increased through State wildlife action plans, and other Service partnerships with Federal, State, and nongovernmental partners. These actions contributed to improved water quality conditions, increases in forest and riparian cover, and reductions in point source and nonpoint-source pollutants in all historical tributary systems.

Based on these habitat and water quality improvements, we expect both extant populations to increase in size, with continued reproduction and recruitment. We also expect these populations to expand into unoccupied historical tributaries, eventually resulting in improved occurrence complexity in both watersheds. All of these actions and conditions will result in increased resiliency for the Bayou de Chien/Jackson and Little Bayou de Chien populations over the next 30–50 years. Under Scenario 2, representation of the relict darter is expected to remain at a low level. The species' expansion within the Bayou de Chien and Little Bayou de Chien watersheds will bolster the species' resiliency and redundancy, but the species' low genetic diversity cannot be increased. Under Scenario 2, redundancy of the relict darter will increase due to the species' expansion and improved resiliency within the Bayou de Chien and Little Bayou de Chien watersheds and due to the species' recolonization of historical tributaries such as South Fork Bayou de Chien. This increased redundancy will decrease the likelihood that a catastrophic event, such as an extreme drought or pollution event, would lead to the species' extinction. Under Scenario 2, we expect the relict darter to exhibit low–moderate redundancy.

Under Scenario 3 (worsening trend), we projected rates of land use change and urbanization to be higher than current rates. The current trend in climate worsened (high RCP of 8.5), and within the next 10 years, populations were impacted by either drought or

floods, with warmer stream temperatures and lower rainfall. Over the long term (30–50 years), drought affected both populations at intervals and severity levels higher than what has occurred over the last 10 years. Some conservation actions continued in the Bayou de Chien system, but there was a net decrease in these activities due to reduced agency funding. All of these actions and conditions resulted in declining habitat and water quality conditions that will negatively affect resiliency estimates for both extant populations.

For this scenario, we project low resiliency for the Bayou de Chien/Jackson population and potential extirpation of the Little Bayou de Chien population by 2070. Under Scenario 3, representation of the relict darter is expected to remain at a low level. Reduced resiliency of the Bayou de Chien/Jackson Creek population and extirpation of the Little Bayou de Chien population will increase the species' vulnerability to stochastic disturbance and will likely reduce the species' ability to adapt to changing environmental conditions. Under Scenario 3, redundancy of the relict darter is expected to remain at a low level; however, extirpation of the Little Bayou de Chien population reduces the species' range, leaving it with a single population (Bayou de Chien/Jackson Creek) that is more vulnerable to a catastrophic event such as an extreme drought or chemical spill. The species' redundancy is also weakened by lower resiliency of the Bayou de Chien/Jackson Creek population, which will be faced with declining physical habitat and water quality conditions.

Synergistic and Cumulative Effects

In addition to affecting the relict darter individually, it is possible that several of the risk factors summarized above are acting synergistically or cumulatively on the species. The combined impact of multiple stressors is likely more harmful than a single stressor acting alone. The dual stressors of climate change and direct human impact have the potential to affect aquatic ecosystems by altering stream flows and nutrient cycles, eliminating habitats, and changing community structure (Moore et al. 1997, p. 942). Increased water temperatures and a reduction in stream flow are the climate change effects that are most likely to affect stream communities (Poff 1992, entire), and each variable is strongly influenced by land use patterns.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in

the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Relict Darter Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of “endangered species” or “threatened species.” The Act defines an endangered species as a species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. For a more detailed discussion on the factors considered when determining whether a species meets the definition of an endangered species or a threatened species and our analysis on how we determine the foreseeable future in making these decisions, please see Regulatory and Analytical Framework.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we conclude that the risk factors acting on the relict darter and its habitat, either singly or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that the species is in danger of extinction (an endangered species) throughout all of its range. As described in Current Condition, the relict darter is naturally a narrow endemic species. Its low species redundancy and representation are tempered by the moderate resiliency of the Bayou de Chien/Jackson Creek population, which has high relict darter abundance and evidence of continued reproduction. The increased population size and successful recruitment trends have improved based on surveys

completed during the past decade. Further, this moderately resilient population has survived threats, primarily because conservation efforts over the past three decades have improved and protected habitat within the system, thus enabling the breeding, feeding, and sheltering needs of the relict darter to be met and thus sustaining the population over time. The Service continues to work with partners on these projects. Additionally, a second population in the Little Bayou de Chien was discovered in 2017. While this newly discovered population has low resiliency, the addition of a second population adds to the species' redundancy. The current resiliency of the Jackson Creek/Bayou de Chien population, with a population size that has doubled in the past decade to nearly 23,000 relict darters showing evidence of reproduction and successful recruitment, along with the added redundancy of the newly discovered Little Bayou de Chien population and the reduced habitat threats, indicate that the species is not currently in danger of extinction. Therefore, after assessing the best available information, we conclude that the relict darter no longer meets the Act's definition of an endangered species.

However, the species still faces threats. Our analysis of the relict darter's current condition shows that while the species has maintained resiliency since it was listed in 1993, it is now represented by only two populations in one watershed, thus redundancy is inherently low. The species also has low representation based on its reduced genetic diversity and low effective population size (Factor E), likely a result of a population bottleneck caused by extensive channelization and habitat disturbance throughout the Bayou de Chien system in the early 20th century. Habitat loss and degradation through stream channel disturbance, removal of riparian vegetation, and pollution continue to affect the species (Factor A), even though conservation actions over the past three decades have led to improved habitat conditions in portions of the Bayou de Chien mainstem and Jackson Creek, contributing to moderate resiliency for the larger population. The relict darter has benefited from protection as an endangered species under the Act, and improvements in water quality and habitat conditions stemming from both national and Kentucky statutes and regulations; however, these regulations have not prevented the degradation of some habitats used by the species (Factor D).

The primary threats that are currently acting on the species are expected to continue into the future, climate change (Factor E) is expected to exacerbate existing threats, and the species' low redundancy and low representation put the species at risk of extinction throughout all of its range in the foreseeable future. Fifty years was considered "foreseeable" in this case because it included projections from available models and was biologically meaningful to the species. We can reasonably determine within this 50-year timeframe that both the threats as presented in the models of predicted urbanization, land use, and climate change and the species' responses to those threats are likely.

The range of plausible future scenarios of relict darter habitat conditions and water quality factors suggest slightly variable resilience into the future. Under the continuation of current trend scenario (Scenario 1), resiliency remains low or moderate in the two populations, with redundancy and representation remaining low. Under the improving trend scenario (Scenario 2), resiliency improves for both populations, with habitat conditions predicted to improve because of an increased percentage of forested land with both reduced percentages of agricultural land and urbanization, along with reduced climate change rates. Representation remains low under this scenario, but redundancy improves because of reintroduction of the species into historical habitats or natural expansion within the system. There is greater uncertainty regarding the species' future status, primarily due to conservation action implementation with this scenario than in the other two future scenarios. Under the worsening trend scenario (Scenario 3), resiliency is low in the one remaining population, and one population is likely extirpated resulting in reduced redundancy and low representation. This expected reduction in both the number and distribution of resilient populations is likely to increase the species' vulnerability to both stochastic and catastrophic disturbances. Compared to the other two scenarios, the conditions from Scenario 3 were considered more likely to contribute to the future condition of the species, primarily because of expected continued sedimentation and water quality degradation combined with the expected synergistic effects of climate change in the future.

In summary, while the relict darter's viability has improved over time (see Conservation Efforts), three major

factors that are influencing the viability of the species are expected to affect it into the future: Habitat loss and degradation, restricted range/isolation, and climate change. Habitat loss and degradation resulting from siltation, channelization/riparian vegetation removal, drainage of riparian wetlands, and water quality degradation (pollution) pose the largest risk to the current and future viability of the relict darter. With the plausibility of future land use changes that could impact instream habitat and water quality, the projected worsening climate conditions, and given the inherently low redundancy that increases vulnerability to catastrophic events, the relict darter is at risk of extinction within the next 50 years. Thus, after assessing the best available information, we conclude that the relict darter is not currently in danger of extinction, but it is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address either the "significance" question or the "status" question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity*, we now consider whether there are any

significant portions of the species' range where the species is in danger of extinction now (*i.e.*, endangered). In undertaking this analysis for relict darter, we choose to address the significance question first. First we assessed the two portions of the range (Bayou de Chien/Jackson Creek and Little Bayou de Chien). In the absence of a definition of significance, we determined significance on a case-by-case basis for the relict darter using a reasonable interpretation of significance and providing a rational basis for our determination. In doing so, we considered what is currently observed about the contributions made by each *geographic portion* in terms of biological factors, focusing on the importance of each in supporting the continued viability of the species. We evaluated whether these areas occupy relatively large or particularly high-quality or unique habitat. As a narrow ranging endemic, both relict darter populations occur within one 214-mi² (554-km²) watershed in three counties in southwestern Kentucky (Service 2020a, p. 17), and Little Bayou de Chien is a tributary to Bayou de Chien. We determined that the Bayou de Chien/Jackson Creek portion is significant, as it is large geographically relative to the entire range of the species, it contains high quality/high value habitat for the species, and it contains habitat essential to the relict darter's life history, and therefore is important for the overall conservation of the species. We determined that the Little Bayou de Chien portion is not significant, as it constitutes a very small portion of the range and does not represent unique or high quality habitat for the relict darter.

Since we determined that Bayou de Chien/Jackson Creek is a significant portion, we next evaluate whether the relict darter is in danger of extinction (*i.e.*, endangered) in that portion. Since there are only two portions, and since Little Bayou de Chien was determined to not be significant, then the Bayou de Chien/Jackson Creek portion drove our initial status determination of threatened for the relict darter, and therefore that portion does not have a different status than the entire range. Furthermore, the threats the relict darter faces are not concentrated in any portion of the range, rather the threats affect the entire narrow range of the species. Habitat loss and degradation resulting from siltation, channelization/riparian vegetation removal, drainage of riparian wetlands, and water quality degradation (pollution) pose the largest risk to viability of the relict darter throughout its entire range. Based on

this, there are no portions of the species' range that provide a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors v. Department of the Interior*, No. 16-cv-01165-JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best scientific and commercial data available indicates that the relict darter meets the definition of a threatened species. Therefore, we propose to reclassify the relict darter as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like "necessary and advisable" demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to us when adopting the prohibitions under section 9 of the Act.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section

4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alesea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, once an animal is on the threatened list, the Secretary has an almost infinite number of options available to her with regard to the permitted activities for those species. She may, for example, permit taking, but not importation of such species, or she may choose to forbid both taking and importation but allow the transportation of such species (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address the relict darter's specific threats and conservation needs. Although the statute does not require us to make a "necessary and advisable" finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the relict darter. As discussed under Summary of Biological Status and Threats, we have concluded that the relict darter is no longer currently at risk of extinction, but is still likely to become in danger of extinction within the foreseeable future, primarily due to habitat degradation and loss stemming from siltation, channelization and riparian vegetation removal, riparian wetland drainage, and water quality degradation. These threats contribute to the negative effects associated with the species' restricted range and effects of climate change. The provisions of this proposed 4(d) rule would promote conservation of the relict darter by providing continued protection from take and encouraging management of the landscape in ways that meet both watershed and riparian management considerations and the conservation needs of the relict darter. The provisions of this rule are one of many tools that we would use to promote the conservation of the relict darter.

This proposed 4(d) rule would apply only if and when we make final the reclassification of the relict darter as a

threatened species. Finally, the only portion of this proposed rule that would have regulatory effect if the rule is made final is the text set forth in the rule portion of this document (*i.e.*, the text we propose to revise § 17.44 in title 50 of the Code of Federal Regulations (CFR)). The explanatory text in the Provisions of the Proposed 4(d) Rule section below merely clarifies the intent of these proposed amendments to the CFR.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the relict darter by adopting the same prohibitions that apply to an endangered species under section 9 of the Act and 50 CFR 17.21. Except as otherwise authorized or permitted, this proposed 4(d) rule would continue to prohibit importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; and selling or offering for sale in interstate or foreign commerce. The prohibitions would apply throughout the species' range.

Identical to the regulations that apply under endangered status, the prohibitions in this proposed 4(d) rule would prohibit all forms of take within the United States. Under the Act, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating intentional and incidental take would help preserve the species' remaining populations, enable beneficial management actions to occur, and decrease synergistic, negative effects from other stressors.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

In this 4(d) rule, we propose to prohibit intentional take, including capturing and handling, because these activities require training and

experience. Such activities include, but are not limited to, monitoring and research involving capturing and handling relict darters. While these activities are important to relict darter recovery, there are proper techniques for capturing and handling fish that require training and experience. Improper capture or handling can cause injury or even result in death of relict darters. Therefore, to ensure that these activities continue to be conducted correctly by properly trained personnel, the proposed 4(d) rule would prohibit intentional take; however, these activities could be covered under a section 10(a)(1)(A) permit.

Threats to the species are noted above and described in detail under Summary of Biological Status and Threats. The most significant threat expected to affect the species in the foreseeable future is habitat loss and degradation from siltation, channelization and riparian vegetation removal, drainage of riparian wetlands, and water quality degradation. Some activities have the potential to affect the relict darter, including agriculture and land development. These activities may result in incidental take through increases in siltation, diminishing water quality, altering stream flow, and reducing fish passage. Therefore, in this 4(d) rule, we propose prohibiting take to help preserve the relict darter's remaining populations, slow the rate of population decline, preserve and potentially provide for expansion of the population, and decrease synergistic, negative effects from other stressors.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act.

Exceptions

The proposed 4(d) rule would also provide for the conservation of the species by incorporating several exceptions to allow for routine enforcement activities, allow for assisting sick or injured fish, and encourage the active habitat management this species uniquely requires. The statute also contains certain statutory exemptions from the prohibitions, which are found in

sections 9 and 10 of the Act, and other regulatory exceptions from the prohibitions, which are found in our regulations at 50 CFR part 17, subparts C and D. Below, we describe these exceptions to the prohibitions that we are proposing for the relict darter.

To start, the proposed rule outlines several regulatory exceptions to the prohibitions for the relict darter. These exceptions already apply while the species is listed as endangered; they would continue to apply if the Service finalizes a rule to reclassify the species as threatened because they advance the recovery of the species. First, the proposed rule excepts take associated with activities that are authorized by permits under § 17.32. This means that if a manager has received or receives a permit for a particular activity (*e.g.*, a section 10(a)(1)(A) permit for monitoring relict darters), any take that occurs as a result of activities covered by this permit remains excepted from the prohibitions on take under the issued permit; in other words, the manager would not be liable for any take for which the manager already has a permit.

Second, the proposed rule incorporates certain regulatory exceptions that allow take by representatives of the Service or of a State conservation agency to aid a sick specimen or to dispose of, salvage, or remove a dead specimen that is reported to the Office of Law Enforcement; and take by Federal and State law enforcement officers performing their official duties to possess, deliver, carry, transport, or ship any relict darters taken in violation of the Act, as necessary. All of the proposed standard exceptions for endangered species currently apply while the species is listed as endangered.

Next, the proposed 4(d) rule incorporates a regulatory exception that does not currently apply while the relict darter is listed as endangered (the exception from § 17.31(b)); the Service can apply this standard exception only to take prohibitions for threatened species. The proposed rule allows employees of State conservation agencies operating under a cooperative agreement with the Service in accordance with section 6(c) of the Act to take relict darters in order to carry out conservation programs for the species. We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and

plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve the relict darter that may result in otherwise prohibited take without additional authorization.

Finally, unlike the regulations that apply to the species under endangered status, the proposed 4(d) rule provides species-specific exceptions to the standard take prohibitions in the proposed rule; these species-specific exceptions would facilitate continued and increased implementation of beneficial management practices that provide for conservation of the species. Within each occupied stream, restoration actions will promote expansion of the relict darter's range and reduce the fragmentation and isolation of populations. These actions can reduce stressors that impact the relict darter, including runoff of siltation and pollution, and may (through riparian reforestation) mediate local water temperatures expected to increase with climate change. Incidental take associated with habitat restoration actions excepted by the proposed 4(d) rule may result in some minimal level of harm or temporary disturbance to the relict darter. For example, a culvert replacement project would likely elevate suspended sediments for several hours, and the darters would need to move out of the sediment plume to resume normal feeding behavior. Because 4(d) rule exceptions would not apply during the relict darter's 4-month spawning period, a critical phase of the species' life history, the potential for incidental take is further minimized.

Overall, these activities benefit the species by expanding suitable habitat and reducing within-population fragmentation, contributing to conservation and recovery. Consistent with all of the proposed exceptions and based on the best available information, our proposed 4(d) rule excepts incidental take associated with the following activities, if carried out in accordance with existing regulations and permit requirements, and

conducted outside the March through June spawning season:

- Channel restoration or improvement projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers and, if the projects involve known relict darter spawning habitat, take place between June 30 and March 1. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

- Streambank stabilization projects that use bioengineering methods to replace preexisting, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Stream banks may be stabilized using native live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized through the use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

- Bridge and culvert replacement/removal projects or low head dam removal projects that remove migration barriers or generally allow for improved upstream and downstream movements of relict darters while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species.

- Transportation projects that incorporate State-approved BMPs that eliminate sedimentation, do not block stream flow, do not channelize streams, and that are for the purposes of providing for fish passage under a wide range of hydrologic conditions at stream crossings (University of Kentucky Transportation Center 2009, entire).

- Projects carried out in the species' range by the U.S. Department of Agriculture's Natural Resources Conservation Service that do not alter

habitats known to be used by the relict darter beyond the fish's tolerances.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the relict darter. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested).

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). We also determine that 4(d) rules that accompany regulations adopted pursuant to section 4(a) of the Act are not subject to the National Environmental Policy Act.

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. There are no known Tribes within the range of the relict darter.

References Cited

A complete list of references cited in this proposed rulemaking is available on the internet at <https://www.regulations.gov>.

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service’s Species Assessment Team and the Kentucky Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11, in paragraph (h), by revising the entry for “Darter, relict” under Fishes on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
FISHES				
Darter, relict	<i>Etheostoma chienense</i> ...	Wherever found	T	58 FR 68480, 12/27/1993; [Federal Register citation of the final rule]; 50 CFR 17.44(hh) ^{4d} .
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

■ 3. Further amend § 17.44, as proposed to be amended on November 19, 2020, at 85 FR 74050, on November 12, 2020, at 85 FR 71859, and on July 7, 2021, at 86 FR 35708, by adding a paragraph (hh) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(hh) Relict darter (*Etheostoma chienense*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to relict darter. Except as provided under paragraph (hh)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

- (i) Import or export, as set forth at § 17.21(b) for endangered wildlife.
- (ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.
- (iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Channel restoration or improvement projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers and, if the projects involve known relict darter spawning habitat, that take place between June 30 and March 1. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that

enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(B) Streambank stabilization projects that use bioengineering methods to replace preexisting, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species and, if the projects involve known relict darter spawning habitat, that take place between June 30 and March 1. Stream banks may be stabilized using native live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily

rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized through the use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(C) Bridge and culvert replacement/removal projects or low head dam removal projects that remove migration barriers or generally allow for improved upstream and downstream movements of relict darters while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species, if completed between June 30 and March 1.

(D) Transportation projects that follow best management practices that eliminate sedimentation, do not block stream flow, do not channelize streams, and provide for fish passage under a wide range of hydrologic conditions at stream crossings and that are done between June 30 and March 1.

(E) Projects carried out in the species' range by the Natural Resources Conservation Service, U.S. Department of Agriculture, that:

(1) Do not alter habitats known to be used by the relict darter beyond the fish's tolerances; and

(2) Are performed between June 30 and March 1 to avoid the time period when the relict darter will be found within its spawning habitat, if such habitat is affected by the activity.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022-03315 Filed 3-2-22; 8:45 am]

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Notices

Federal Register

Vol. 87, No. 42

Thursday, March 3, 2022

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

Agricultural Marketing Service

[Doc. No. AMS–NOP–21–0087; NOP–21–07]

Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), National Organic Program (NOP), is announcing a meeting of the National Organic Standards Board (NOSB). The publication of this notice opens the public comment docket so that the NOSB may receive comments from the public. The NOSB assists the USDA in the development of standards for substances to be used in organic production and advises the Secretary of Agriculture on other aspects of the implementation of the Organic Foods Production Act (OFPA).

DATES: A virtual meeting will be held April 26–28, 2022, from 12:00 p.m. to approximately 5:00 p.m. Eastern Time (ET) each day. The NOSB will hear oral public comments via webinars on Tuesday, April 19, 2022 and Thursday, April 21, 2022, from 12:00 p.m. to approximately 5:00 p.m. ET each day. The deadline to submit written comments and/or sign up for oral comment is 11:59 p.m. ET, April 1, 2022.

ADDRESSES: The webinars and meeting are virtual and will be accessed via the internet and/or phone. Access information will be available on the AMS website prior to the webinars. Detailed information can be found at <https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-crystal-city-va-1>.

FOR FURTHER INFORMATION CONTACT:

Michelle Arsenault, Advisory Committee Specialist, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW, Room 2642–S, STOP 0268, Washington, DC 20250–0268; Phone: (202) 997–0115; Email: michelle.arsenault@usda.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2 and 7 U.S.C. 6518(e), as amended, AMS is announcing a meeting of the NOSB. The NOSB makes recommendations to the USDA about whether substances should be allowed or prohibited in organic production and/or handling, assists in the development of standards for organic production, and advises the Secretary on other aspects of the implementation of the Organic Foods Production Act, 7 U.S.C. 6501 *et seq.* The NOSB is holding a public meeting to discuss and vote on proposed recommendations to the USDA, to obtain updates from the NOP on issues pertaining to organic agriculture, provide feedback on regulatory priorities, and to receive comments from the organic community. Attendees are only required to register for oral comments. All meeting documents and instructions for participating will be available on the AMS website at <https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-crystal-city-va-1>. Please check the website periodically for updates.

Meeting topics will encompass a wide range of issues, including substances petitioned for addition to or removal from the National List of Allowed and Prohibited Substances (National List), substances on the National List that are under sunset review, and guidance on organic policies.

Public Comments: Comments should address specific topics noted on the meeting agenda.

Written Comments: Written public comments will be accepted on or before 11:59 p.m. ET on April 1, 2022, via <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted after this date will be added to the public comment docket, but NOSB members may not have adequate time to consider those comments prior to making recommendations. The NOP strongly prefers comments be submitted

electronically. However, written comments may also be submitted (*i.e.*, postmarked) via mail to the person listed under **FOR FURTHER INFORMATION CONTACT** by or before the deadline.

Oral Comments: The NOSB will hear oral public comments via webinars on Tuesday, April 19, 2022, and Thursday, April 21, 2022, from 12:00 p.m. to approximately 5:00 p.m. ET each day. Each commenter wishing to address the NOSB must pre-register by 11:59 p.m. ET on April 1, 2022 and can only register for one speaking slot.

Instructions for registering and participating in the webinars can be found at <https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-crystal-city-va-1>.

Meeting Accommodations: USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for reasonable accommodation will be made on a case-by-case basis.

Dated: February 25, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–04441 Filed 3–2–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Soliciting Comments on a Draft Outline of a Strategic Plan for Aquaculture Economic Development and on Updating the National Aquaculture Development Plan

AGENCY: Agricultural Research Service, USDA.

ACTION: Request for public comments.

SUMMARY: The Subcommittee on Aquaculture (SCA) is seeking public comment on a draft outline of the Strategic Plan for Aquaculture Economic Development (SPAED), and information on a planned update to the 1983 National Aquaculture Development Plan (NADP).

The SCA is a statutory subcommittee that operates under the Committee on

Environment of the National Science and Technology Council (NSTC) under the Office of Science and Technology Policy in the Executive Office of the President [National Aquaculture Act of 1980 (Pub. L. 96–362, 94 Stat. 1198, 16 U.S.C. 2801, *et seq.*) and the National Aquaculture Improvement Act of 1985 (Pub. L. 99–198, 99 Stat. 1641)]. In May of 2020, the SCA established a Task Force charged with developing the SPAED, and this Task Force is seeking public comment on a draft outline regarding the goals and objectives to be included. The draft outline is available at <https://www.ars.usda.gov/SCA/>.

In addition, the National Aquaculture Act of 1980 required select federal agencies to develop, and update as necessary, the NADP. Last completed in 1983, the NADP describes aquaculture-associated technologies, problems, and opportunities in the United States and its territories. It recommends actions to solve problems, and analyzes the social, environmental, and economic impacts of growth in aquaculture. As announced in the **Federal Register** in August 2021, the SCA is updating the NADP, which will incorporate by reference the final and any subsequent updated versions of the National Strategic Plan for Aquaculture Research (NSPAR), the Strategic Plan to Enhance Regulatory Efficiency in Aquaculture (SPEREA), and the SPAED. The NSPAR and the SPEREA are in the final stages of review. Draft versions can be found at www.ars.usda.gov/sca, where final versions will be posted once approved. The SCA is seeking comments on additional topics to be covered in the NADP.

DATES: Comments must be received by April 1, 2022, to be assured of consideration.

ADDRESSES: The draft outline of the SPAED can be downloaded at www.ars.usda.gov/sca/. Address all comments concerning the SPAED and topics to be covered in the NADP to:

- *Electronic Submissions:* Submit electronic public comments to AquacultureEcoDev@usda.gov; or
- *Mail:* Gabriela McMurtry, Attn: Aquaculture Economic Development Plan Comments, Office of Policy, F/AQ, 1315 East-West Highway, 14th Floor, Silver Spring, MD 20910.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and will be made available for public viewing upon request. All personal identifying information (*e.g.*, name, address, etc.),

confidential business information, or other sensitive information submitted voluntarily by the sender will be publicly accessible.

FOR FURTHER INFORMATION CONTACT: Deputy Director, Office of Aquaculture, NOAA Fisheries—David O'Brien, david.obrien@noaa.gov, 301–427–8337. Assistant Deputy Administrator, U.S. Department of Agriculture, Rural Development—Andy Jermolowicz, andrew.jermolowicz@usda.gov, 202–690–0361.

SUPPLEMENTARY INFORMATION:

Type of Request: Seeking public review and comment on the draft outline of a Strategic Plan for Economic Development through Aquaculture and input on additional topics to be covered in the National Aquaculture Development Plan.

Abstract: The Subcommittee on Aquaculture (SCA)—previously known as the Interagency Working Group on Aquaculture (IWGA) and the Joint Subcommittee on Aquaculture (JSA)—is a statutory subcommittee that operates under the Committee on Environment of the National Science and Technology Council (NSTC) under the Office of Science and Technology Policy in the Executive Office of the President [National Aquaculture Act of 1980 (Pub. L. 96–362, 94 Stat. 1198, 16 U.S.C. 2801, *et seq.*); the National Aquaculture Improvement Act of 1985 (Pub. L. 99–198, 99 Stat. 1641)]. The SCA is co-chaired by the Department of Agriculture, Department of Commerce, and the White House Office of Science and Technology Policy. Members include the Department of Agriculture, Department of Commerce, Army Corps of Engineers, Department of the Interior, Food and Drug Administration, Environmental Protection Agency, and the Office of Management and Budget. The SCA serves as the Federal interagency coordinating group to increase the overall effectiveness and productivity of Federal aquaculture research, regulation, technology transfer, and assistance programs. This interagency coordinating group has been functioning since before the National Aquaculture Act was signed into law in 1980.

In 2020, the SCA established an Economic Development Task Force charged with developing a strategic plan to support a robust, resilient, and environmentally sustainable domestic aquaculture sector. The plan seeks to support the viability and expansion of existing operations, encourage new entrants, and maximize the effectiveness of existing federal policies and programs, while strengthening the

public-private partnerships with federal stakeholders. This Task Force includes federal employees from the Department of Agriculture, Department of Commerce, Department of the Interior, the State Department, the Department of Health & Human Services, the Small Business Administration, and Environmental Protection Agency.

The NAA of 1980 requires, in revising the NADP, that the Secretary of Agriculture consult with the Secretary of Commerce and the Secretary of the Interior, other appropriate Federal officers, States, regional fishery management councils established under the Magnuson-Stevens Act, and representatives of the aquaculture industry. In addition, the Act requires the Secretary of Agriculture to give interested persons and organizations an opportunity to comment during the development of the Plan. The NADP is required to include all the elements listed in National Aquaculture Act of 1980; and additionally, identify legal/regulatory constraints and solutions, and specifically those associated with use rights. The main elements of the NADP are described in Sec. 2303(b)(1) through (6) of the National Aquaculture Act of 1980.

The SCA believes that much of the required content of the NADP was developed either within the former Joint Subcommittee on Aquaculture, the current SCA, or individually by agencies. As described in this notice, the NSPAR and SPEREA are in their final stages of review, and the SPAED is under development. The SCA believes that much of the required content of the NADP will be contained within these three strategic plans. The SCA seeks public comment on additional topics to be addressed in the NADP that are not covered in the NSPAR, SPEREA, and SPAED.

All comments received will become a matter of public record.

Simon Y. Liu,

Associate Administrator, ARS.

[FR Doc. 2022–04444 Filed 3–2–22; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek Renewal of an Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the office of Management and Budget (OMB) regulations, this notice announces the Agricultural Research Service's (ARS) intent to seek reinstatement of the ARS Animal Health National Program Assessment Survey. This voluntary information collection will give beneficiaries of ARS research the opportunity to provide input on the impact of the research conducted by ARS in the last National Program cycle. This input will be used for planning the research agenda for the next 5-year program cycle.

DATES: Comments must be received by May 2, 2022 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Ms. Janice Boarman, Program Analyst, Agricultural Research Service, Office of National Programs, 5601 Sunnyside Avenue, GWCC, Room 2-2035, Beltsville, Maryland 20705-5138. Submit electronic comments to Janice.Boarman@usda.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Boarman at (301) 504-4764.

SUPPLEMENTARY INFORMATION:

Title: ARS Animal Health National Program Assessment Evaluation Form.
OMB Number: 0518-0042.

Expiration Date: September 30, 2022.

Type of Request: Approval to seek reinstatement of the ARS Animal Health National Program Assessment Survey. This voluntary information collection will give beneficiaries of ARS research the opportunity to provide input on the impact of the research conducted by ARS in the last National Program cycle for the Animal Health National Program. This survey seeks input from beneficiaries of research conducted by ARS for program planning and ensures alignment of the ARS National Programs with the needs of our customers, partners, and stakeholders.

Abstract: ARS research covers the span of nutrition, food safety and quality, animal and plant production and protection, and natural resources and sustainable agricultural systems. It is organized into fifteen National Programs addressing specific areas of this research. These National Programs serve to bring coordination, communication, and prioritization to approximately 660 research projects carried out by ARS and focus on the relevance, impact, and quality of ARS research. The requested voluntary electronic evaluation survey will give beneficiaries of ARS research the opportunity to provide input on the impact of the ARS Animal Health

National Program. For the purpose of this National Program Assessment, impact is defined as research that has influenced or will significantly influence the area covered by the National Program; has created or will create information, best practices, and/or economic opportunities for the National Program's customers, partners, and stakeholders; or has enabled or will enable action and regulatory agencies to formulate policies and regulations to support American agriculture. The electronic evaluation form will be available online through a dedicated URL. The input provided through the completion of the evaluation form will be shared with customers, partners, stakeholders, and ARS Administrators as part of the National Program's assessment process. ARS National Program Assessments are conducted every 5 years as part of ARS' National Program planning cycle to ensure the relevance, quality, and impact of ARS research. The assessment serves as both a retrospective evaluation and as the foundation for future priority setting for the Agency. The electronic evaluation form will allow ARS to outreach to its many customers, partners and stakeholders that are unable to participate in planned assessment meetings and also ensures an efficient means of obtaining the greatest amount of input on the impact and direction of the ARS Animal Health National Program.

Estimate of Burden: Completing the electronic evaluation form is estimated to average 15 minutes per response.

Estimated Number of Respondents: 600.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 150 hours.

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 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 the assumptions used; (c) ways to enhance the quality, utility, and clarity of the input provided by a wide array of customers, and; (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request

for OMB approval. All comments will become a matter of public record.

Simon Y. Liu,

Associate Administrator, ARS.

[FR Doc. 2022-04443 Filed 3-2-22; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF AGRICULTURE

**Submission for OMB Review;
Comment Request**

February 28, 2022.

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

Comments regarding this information collection received by April 4, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

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

Food and Nutrition Service

Title: Fourth Access, Participation, Eligibility, and Certification Study (APEC IV).

OMB Control Number: 0584-0530.

Summary of Collection: USDA's Food and Nutrition Service (FNS) depends upon the APEC study series to provide reliable, national estimates of errors and improper payments made to school districts in which the National School Lunch Program (NSLP) and School Breakfast Program (SBP) are operated. This is the fourth study in the APEC series and it will provide the required information for school year (SY) 2023–2024.

The Payment Integrity Information Act of 2019 (PIIA) requires that FNS identify and reduce improper payments in these programs, including both underpayments and overpayments. In order to comply with the law, programs must have a statistically valid rate of improper payment below 10 percent, and programs out of compliance with PIIA are subject to increased scrutiny and reporting requirements.

Need and Use of the Information: The specific study objectives of APEC IV are: Objective 1: Generate a national estimate of the annual amount of improper payments in the National School Lunch Program and School Breakfast Program based on SY 2023–2024 by replicating and refining the methodology used in prior APEC studies. Objective 2: Provide a robust examination of the relationship between error rates and student (household), school, and school food authority (SFA) characteristics. Objective 3: Conduct two sub-studies testing the effect that data collection methods have on responses.

APEC IV will collect data to measure certification, aggregation, and meal claiming errors via in-person visits to SFAs and schools and surveys of SFA directors and households. Data collection will include (a) abstraction from income eligibility applications and categorical eligibility records; (b) abstraction of meal count and claiming records from SFAs, schools, States, and FNS administrative data; (c) an online survey of SFA directors; (d) meal observations in schools; and (e) a telephone survey of households.

Description of Respondents: Individuals/Households, State, Local, or Tribal government.

Number of Respondents: 13,068.

Frequency of Responses: Reporting: Once, Annually.

Total Burden Hours: 21,013.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–04478 Filed 3–2–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–19–MFH–0024]

New Fee Structure for Section 538 Guaranteed Rural Rental Housing Program Initial and Annual Guarantee Fees

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is announcing a new fee structure for the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) initial and annual guarantee fees.

DATES: The effective date of the revised fees is April 4, 2022.

FOR FURTHER INFORMATION CONTACT:

Tammy Daniels, Finance and Loan Analyst, Multi-Family Housing Production and Preservation Division, Rural Housing Service, USDA, STOP 0781, 1400 Independence Avenue SW, Washington, DC 20250–0781, Telephone: (202) 720–0021 (this is not a toll-free number); email: tammy.daniels@usda.gov.

SUPPLEMENTARY INFORMATION:

Authority

The RHS administers the 538 Guaranteed Rural Rental Housing Program (GRRHP) loans under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p–2) and operates under 7 CFR part 3565. As set forth in 7 CFR part 3565, the Agency will publish any changes to the fees in a Notice in the **Federal Register**.

Background

RHS administers the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p–2). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities in rural areas. Section 538(g) authorizes the Secretary of Agriculture to charge certain fees to lenders for loan guarantees (see, 42 U.S.C. 1490p–2(g)). The fees charged are used to cover the costs of loan guarantees pursuant to the provisions of the Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*).

On December 3, 2020, the Agency published a final rule in the **Federal Register** at 85 FR 77985 with an effective date of January 4, 2021, which amended 7 CFR part 3565 by removing the stated amount that the Agency will

charge for the initial and annual guarantee fees. This regulation update affords the program the flexibility and ability to create the maximum housing affordability to residents by lowering program costs when practical, without the need for a regulatory change. As stated in the final rule, if changes occur in the fee amounts, the Agency will release those changes through a Notice in the **Federal Register** and will provide guidance on how to process the loans which will be impacted by the new fee structure. Interested parties will be able to locate current fees on the Agency's website at: <https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-loan-guarantees>.

New Fee Structure

Projects with a fully executed (signed by both the Agency and Lender) conditional commitment as of the date this notice is published, or a loan obligated prior to October 1, 2021 are ineligible for the reduced fees. Loans in the following three categories will receive a greater reductions in the fees: (1) Green and Energy Efficient, (2) Preservation of Existing Section 515, 514/516 Rural Development Properties, and (3) Workforce Housing. The overall status of the GRRHP portfolio is healthy. There is a low delinquency rate, the program operates at a negative subsidy, and the program has used all or most of its appropriations in the past 5 years. The initial and annual guarantee fee is usually passed on to the borrower. Reducing the fees will decrease the debt service for future loans which will ultimately decrease the rents and provide savings to the tenants, allow more funds to be allocated toward capital improvements while continuing to offset the cost to operate the program.

On February 18, 2021, the Agency conducted a forum soliciting feedback from Section 538 lenders, borrowers, and program stakeholders. The general feedback was that the new fee structure for the initial and annual guarantee fees should take into account affordability and target projects whose rents are at 60 percent Area Median Income (AMI) and have current government subsidies. The new fee structure being implemented has taken this into account by providing greater reduced fees for preservation of existing Section 515, 514/516 Rural Development properties.

The annual fee will not be changed for existing Section 538 GRRHP loans. At the discretion of the Agency, Section 538 GRRHP loans that are refinanced or modified after the revised fee structure goes into effect and can successfully demonstrate that the reduced fee results

in capital improvements to the property or a reduction of rents, will be considered for eligibility of a reduced fee. Existing 538 GRRHP loans that are refinanced or modified, solely as part of an interest rate reduction, will not be eligible for reduced annual fees. The three categories that will receive a greater reduction in the fees are detailed as follows:

1. Workforce Housing: Workforce Housing is defined as housing affordable to households earning between 60 and 120 percent of area median income (AMI). By statute, the income in the 538 program is capped at 115 percent AMI. Properties with 100 percent of the units affordable to households at 80 percent–115 percent AMI will be eligible for the reduced fee.
2. Preservation of Existing Section 515, 514/516 Rural Development Properties.
3. Green and Energy Efficient Fee Structure: Upon submission of the application for existing properties that meet the requirement of the Green/Energy Efficient

fee structure, the lender must collect from the borrower and submit to the Agency evidence that the specified, independent green building standard has been achieved. Owners may access the United States Environmental Protection Agency’s ENERGY STAR Portfolio Manager software at no cost. Evidence will be in the form of a copy of the Portfolio Manager’s report showing that the building performance is at or above 75 on the 1–100 ENERGY STAR score in Portfolio Manager. For new construction and substantial rehabilitation or renovations, the lender and owner must certify that it will pursue and achieve an industry recognized standard for green building. That evidence must be submitted no more than 15 months after completion of construction or 15 months after break-even occupancy when those standards have been achieved. If these standards are not achieved, the Agency may impose protocols or restrictions to ensure the property is brought into compliance.

Acceptable, independently verified standards include the Enterprise Green Communities Criteria; U.S. Green Building Council’s LEED–H, LEED–H Midrise, LEED–

NC, or LEED for Existing Buildings: Operations & Maintenance; ENERGY STAR certification; EarthCraft House; EarthCraft Multifamily; Earth Advantage New Homes; Greenpoint Rated New Home; Greenpoint Rated Existing Home (Whole House or Whole Building label); the National Green Building Standard (NGBS); Passive Building Certification or EnerPHit Retrofits certification from the Passive House Institute US (PHIUS), International Passive House Association, or the Passive House Institute; and Living Building Challenge Certification from the International Living Future Institute, or other industry-recognized green building standards, in the sole discretion of Rural Development, Multi-Family Housing. These programs evolve and newer versions are published, sometimes annually. Projects must participate in the current version of the programs and must consult with the program provider for the most current, applicable and available programs for their project location.

The Agency announces the new fee structure as follows:

	Initial guarantee fee (due prior to or at closing)	Annual guarantee fee (due each year or portion of the year the guarantee remains in effect)*
	Basis points	Basis points
Amended Fee Structure	65	35
Workforce Housing—Rents between 80%–115% AMI	60	25
Preservation of Existing Section 515, 514/516 Rural Development Properties	60	25
Section 538 New Construction/Substantial Rehab w/Green	60	25

* The annual guarantee fee is paid in advance. (Example: A loan that closes on December 31, 2021 will incur the annual fee for 2022).

Non-Discrimination Statement

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA

TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant’s name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax*: (833) 256–1665 or (202) 690–7442; or

(3) *Email*: OASCR.Program-Intake.

Joaquin Altoro,
Administrator, Rural Housing Service.
[FR Doc. 2022–04442 Filed 3–2–22; 8:45 am]
BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of a Public Meetings of the Maine Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of a public meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Maine State Advisory Committee to the Commission will hold virtual meetings for project planning on Thursday, March 31, 2022, at 2:00 p.m. (ET); Thursday, April 28, 2022, at 12:00 p.m. (ET); and Wednesday, May 4, 2022, at 12:00 p.m. (ET).

DATES:

• Thursday, March 31, 2022, at 2:00 p.m. (ET):

○ *Link to join by web conference:*
<https://tinyurl.com/5n6sph4w>.

○ *Numbers to join by phone only:* 1–800–360–9505; Access code: 2764 785 1281#.

• Thursday, April 28, 2022, at 12:00 p.m. (ET):

○ *Link to join by web conference:*
<https://tinyurl.com/2p88y3m7>.

○ *Numbers to join by phone only:* 1–800–360–9505; Access code: 2764 523 9881#.

• Wednesday, May 4, 2022, at 12:00 p.m. (ET):

○ *Link to join by web conference:*
<https://tinyurl.com/2p85e6cx>.

○ *Numbers to join by phone only:* 1–800–360–9505; Access code: 2764 507 9906#.

FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg at mtrachtenberg@usccr.gov or by phone at (202) 809–9618.

SUPPLEMENTARY INFORMATION: These meetings are available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing, may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for these meetings.

Members of the public are entitled to make comments during the open period at the end of the meetings. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at mtrachtenberg@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (202) 539–8246. Records and documents discussed during the meetings will be available for public viewing as they become available at www.facadatabase.gov. Persons interested in the work of this advisory committee are advised to go to the Commission’s website, www.usccr.gov, or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

March 31 (2 p.m. ET), April 28 (12 p.m. ET), and May 4 (12 p.m. ET), 2022

I. Welcome and Roll Call

II. Announcements and Updates

III. Approval of Minutes

IV. Discussion: Project Planning

V. Public Comment

VI. Adjournment

Dated: February 25, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–04438 Filed 3–2–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964, A–201–838]

Seamless Refined Copper Pipe and Tube From the People’s Republic of China and Mexico: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these expedited sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on seamless refined copper pipe and tube from the People’s Republic of China (China) and Mexico would likely lead to continuation or recurrence of dumping at the levels indicated in the “Final Results of Sunset Review” section of this notice.

DATES: Applicable March 3, 2022.

FOR FURTHER INFORMATION CONTACT:

Paola Aleman Ordaz, 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) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2021, Commerce published the notice of initiation of the sunset reviews of the *AD Orders*¹ pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² In accordance with 19 CFR 351.218(d)(1)(i) and (ii), Commerce received notices of intent to participate in these sunset reviews from American Copper Tube Coalition (ACTC) and its constituent members³ (collectively, the domestic

¹ See *Seamless Refined Copper Pipe and Tube from Mexico and the People’s Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value from Mexico*, 75 FR 71070 (November 22, 2010) (collectively, *AD Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 86 FR 60201 (November 1, 2021) (*Initiation Notice*).

³ The members of the American Copper Tube Coalition are Mueller Copper Tube Products, Inc.,

interested party), within 15 days after the date of publication of the *Initiation Notice*.⁴ The domestic interested party claimed interested party status under section 771(9)(C) of the Act.

Commerce received adequate substantive responses to the *Initiation Notice* from the domestic interested party within the 30-day period specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce received no substantive responses from any respondent interested parties. On December 20, 2021, Commerce notified the U.S. International Trade Commission that Commerce did not receive an adequate substantive response from respondent interested parties.⁶ In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited, *i.e.*, 120-day, sunset reviews of the *AD Orders*.

Scope of the AD Orders

The products subject to the *AD Orders* are all seamless refined copper pipes and tubes, and are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7411.10.1030 and 7411.10.1090. Products subject to the order may also enter under HTSUS subheadings 7407.10.1500, 7419.80.5050, 7419.99.5050, 8415.90.8065, and 8415.90.8085. The HTSUS numbers are provided for convenience and customs purposes. A full description of the scope of the *AD Orders* is contained in the Issues and Decision Memorandum.⁷ The written description is dispositive.

Mueller Copper Tube West Co., Mueller Copper Tube Company, Inc., Howell Metal Company, and Linesets, Inc., (collectively, Mueller Group) and Cerro Flow Products, LLC (Cerro).

⁴ See Domestic Interested Party’s Letter, “Five-Year (Sunset) Review of Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from China: Notice of Intent to Participate,” dated November 15, 2021; see also Domestic Interested Party’s Letter, “Five-Year (Sunset) Review of Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from Mexico: Notice of Intent to Participate,” dated November 15, 2021.

⁵ See Domestic Interested Party’s Letter, “Seamless Refined Copper Pipe and Tube from China—Substantive Response,” dated December 1, 2021; see also Domestic Interested Party’s Letter, “Seamless Refined Copper Pipe and Tube from Mexico: Substantive Response,” dated December 1, 2021.

⁶ See Commerce’s Letter, “Sunset Reviews Initiated on November 1, 2021,” dated December 20, 2021.

⁷ See Memorandum, “Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Seamless Refined Copper Pipe and Tube from the People’s Republic of China and Mexico,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *AD Orders* and the magnitude of dumping margins likely to prevail if the *AD Orders* were revoked. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Issues and Decision Memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be found at <https://access.trade.gov/public/FRNotices/ListLayout.aspx>.

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *AD Orders* would be likely to lead to continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail would be weighted-average margins up to the following percentages:

Country	Weighted-average margin (percent)
China	60.85
Mexico	27.16

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results and notice in accordance with sections 751(c), and

777(i)(1) of the Act and 19 CFR 351.221(c)(5)(ii).

Dated: February 24, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Orders
- IV. History of the Orders
- V. Legal Framework
- VI. Discussion of the Issues
- VII. Final Results of Expedited Sunset Reviews
- VIII. Recommendation

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-905; C-523-817; C-542-805; C-549-845; C-489-847]

Certain Steel Nails From India, the Sultanate of Oman, Sri Lanka, Thailand, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

AGENCY: Enforcement and Compliance International Trade Administration, Department of Commerce.

DATES: Applicable March 3, 2022.

FOR FURTHER INFORMATION CONTACT:

Genevieve Coen (India); Thomas Martin (the Sultanate of Oman); Nathan James (Sri Lanka); Laura Griffith (Thailand); or Benjamin Luberdia (the Republic of Turkey), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3251; (202) 482-3936; (202) 482-5305; (202) 482-6430; or (202) 482-2185, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2022, the Department of Commerce (Commerce) initiated the countervailing duty (CVD) investigations of imports of certain steel nails (steel nails) from India, the Sultanate of Oman (Oman), Sri Lanka, Thailand, and the Republic of Turkey (Turkey).¹ Currently, the preliminary

¹ See *Certain Steel Nails from India, the Sultanate of Oman, Sri Lanka, Thailand, and the Republic of Turkey: Initiation of Countervailing Duty*

determinations are due no later than March 25, 2022.

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reason for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On February 24, 2022, the petitioner² in this investigation submitted a timely request that Commerce postpone the preliminary CVD determinations.³ The petitioner stated that it is requesting a postponement because additional time is needed to develop the records and review responses in order to determine accurate CVD rates.⁴

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determinations, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations to no later than 130 days after the date on which this investigation was initiated, *i.e.*, May 31, 2022.⁵ Pursuant to section 705(a)(1) of

Investigations, 87 FR 3970 (January 26, 2022) (signed on January 19, 2022).

² The petitioner is Mid Continent Steel & Wire, Inc.

³ See Petitioner's Letter, "Petitioner's Request for Postponement of Preliminary Determinations," dated February 24, 2022.

⁴ *Id.* at 2.

⁵ The preliminary determination deadline falls on May 29, 2022, which is a Sunday. The following day is the Memorial Day federal holiday. Commerce's practice dictates that, where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative*

the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations.

Notification to Interested Parties

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 25, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022-04506 Filed 3-2-22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-137; C-570-138]

Pentafluoroethane (R-125) From the People's Republic of China: Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing antidumping duty (AD) and countervailing duty (CVD) orders on pentafluoroethane (R-125) from the People's Republic of China (China).

DATES: Applicable March 3, 2022.

FOR FURTHER INFORMATION CONTACT: Alex Wood (AD) or Adam Simons (CVD), 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) 482-6172, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) and 735(d) of the Tariff Act of 1930, as amended (the Act), on January 10, 2022, Commerce published its affirmative final determination of sales at less than fair value (LTFV)¹ and its affirmative final determination that countervailable subsidies are being provided to producers and exporters of R-125 from China.² On February 23, 2022, the ITC notified Commerce of its final affirmative determinations that an industry in the United States is materially injured by reason of LTFV imports and subsidized imports of R-125 from China, within the meaning of sections 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Act.³

Scope of the Orders

The products covered by these orders are R-125 from China. For a complete description of the scope of the orders, see Appendix I to this notice.

Antidumping Duty Order

On February 23, 2022, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of R-125 from China.⁴ Therefore, Commerce is issuing this AD order in accordance with sections 735(c)(2) and 736 of the Act. Because the ITC determined that imports of R-125 from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the

normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of R-125 from China. Antidumping duties will be assessed on unliquidated entries of R-125 from China entered, or withdrawn from warehouse, for consumption on or after August 17, 2021, the date of publication of the *LTFV Preliminary Determination*, but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determination, as further described below.⁵

Continuation of Suspension of Liquidation—AD

In accordance with section 736 of the Act, we will instruct CBP to continue to suspend liquidation on all relevant entries of R-125 from China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. These instructions suspending liquidation will remain in effect until further notice. For each producer and exporter combination, Commerce will also instruct CBP to require cash deposits for estimated antidumping duties equal to the cash deposit rates listed below.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as an importer of record would normally deposit estimated duties on the subject merchandise, a cash deposit for each entry of subject merchandise equal to the cash deposit rates listed below.⁶ As stated in the *LTFV Final Determination*, Commerce made certain adjustments for export subsidies from the *CVD Final Determination* to the estimated weighted-average dumping margins to determine each of the cash deposit rates.

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Zhejiang Sanmei Chemical Ind. Co., Ltd	Zhejiang Sanmei Chemical Ind. Co., Ltd	277.95	267.41
Fujian Qingliu Dongying Chemical Ind. Co., Ltd	Zhejiang Sanmei Chemical Ind. Co., Ltd	277.95	267.41

Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

¹ See *Pentafluoroethane (R-125) from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 87 FR 1117 (January 10, 2022) (*LTFV Final Determination*).

² See *Pentafluoroethane (R-125) from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 87 FR 1110 (January 10, 2022) (*CVD Final Determination*).

³ See ITC's Letter, Notification of ITC Final Determinations, dated February 23, 2022 (ITC Notification).

⁴ *Id.*

⁵ See *Pentafluoroethane (R-125) from the People's Republic of China: 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 45959 (August 17, 2021) (*LTFV Preliminary Determination*).

⁶ See section 736(a)(3) of the Act.

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Producers Supplying the Non-Individually-Examined Exporters Receiving Separate Rates (<i>see</i> Appendix II).	Non-Individually-Examined Exporters Receiving Separate Rates (<i>see</i> Appendix II).	277.95	267.41
China-Wide Entity ⁷ .....	.....	278.05	267.51

Provisional Measures—AD

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except that Commerce may extend the four-month period to no more than six months at the request of exporters representing a significant proportion of exports of the subject merchandise. Commerce published its *LTFV Preliminary Determination* on August 17, 2021.⁸ Therefore, the six-month period beginning on the date of publication of the *LTFV Preliminary Determination* ended on February 12, 2022.

Therefore, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of R–125 from China entered, or withdrawn from warehouse, for consumption after February 12, 2022, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC’s final affirmative injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC’s final affirmative injury determination in the **Federal Register**.

Critical Circumstances—AD

With regard to the ITC’s negative critical circumstances determination on R–125 from China, we will instruct CBP to lift suspension and to refund all cash deposits made to secure the payment of estimated antidumping duties with respect to entries of R–125 from China entered, or withdrawn from warehouse, for consumption on or after May 19, 2021 (*i.e.*, 90 days prior to the date of publication of the *LTFV Preliminary Determination*), but before August 17, 2021 (*i.e.*, the date of publication of the *LTFV Preliminary Determination*).

⁷ The China-wide entity also includes Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd.

⁸ See *LTFV Preliminary Determination*.

Countervailing Duty Order

On February 23, 2022, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of imports of R–125 from China.⁹ Therefore, Commerce is issuing this CVD order in accordance with sections 705(c)(2) and 706 of the Act. Because the ITC determined that imports of R–125 from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a)(1) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties on all relevant entries of R–125 from China. Countervailing duties will be assessed on unliquidated entries of R–125 from China which are entered, or withdrawn from warehouse, for consumption on or after June 25, 2021, the date of publication of the *CVD Preliminary Determination*,¹⁰ but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC’s final affirmative injury determination, as further described below.

Suspension of Liquidation—CVD

In accordance with section 706 of the Act, we will instruct CBP to reinstitute suspension of liquidation on all relevant entries of R–125 from China, effective on the date of publication of the ITC’s final affirmative injury determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount

⁹ See ITC Notification.

¹⁰ See *Pentafluoroethane (R–125) from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 86 FR 33648 (June 25, 2021) (*CVD Preliminary Determination*).

based on the net countervailable subsidy rate for the subject merchandise. These instructions suspending liquidation will remain in effect until further notice. Commerce will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC’s final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on the subject merchandise, a cash deposit for each entry of subject merchandise equal to the subsidy rates listed below.¹¹ The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Company	Subsidy rate (percent)
Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd	291.26
Daikin Fluorochemicals (China) Co., Ltd	291.26
Hongkong Richmax Ltd	291.26
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd	291.26
Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd. ¹² ..	3.23
Zhejiang Sanmei Chemical Ind. Co., Ltd. ¹³	2.31
All Others	3.12

Provisional Measures—CVD

Section 703(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published its *CVD Preliminary Determination* on June 25, 2021. Therefore, the provisional measures period, beginning on the date of publication of the *CVD Preliminary*

¹¹ See section 706(a)(3) of the Act.

¹² Commerce has found the following companies to be cross-owned with Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd.: Juhua Group Corporation; Zhejiang Juhua Co., Ltd.; Ningbo Juhua Chemical & Science Co., Ltd.; Zhejiang Quzhou Fluoxin Chemicals Co., Ltd.; and Zhejiang Juhua Chemical Mining Co., Ltd.

¹³ Commerce has found the following company to be cross-owned with Zhejiang Sanmei Chemical Ind. Co., Ltd.: Fujian Qingliu Dongying Chemical Ind. Co. Ltd.

Determination, ended on October 22, 2021. Pursuant to section 707(b) of the Act, the collection of cash deposits at the rate listed above will begin on the date of publication of the ITC's final affirmative injury determinations.

Therefore, in accordance with section 703(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of R-125 from China entered, or withdrawn from warehouse, for consumption after October 22, 2021, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**.

Critical Circumstances—CVD

With regard to the ITC's negative critical circumstances determination on imports of R-125 from China, we intend to instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after March 27, 2021 (*i.e.*, 90 days prior to the date of the publication of the *CVD Preliminary Determination*), but before June 25, 2021 (*i.e.*, the date of publication of the *CVD Preliminary Determination*).

Establishment of the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled "Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws" in the **Federal Register**.¹⁴ On September 27, 2021, Commerce also published the notice titled "Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions" in the **Federal Register**.¹⁵ The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the

persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.¹⁶

In accordance with the *Procedural Guidance*, for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at <https://access.trade.gov>, within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called "AISL-Annual Inquiry Service List."¹⁷

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance*, the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at <https://access.trade.gov>.

¹⁶ *Id.*

¹⁷ This segment will be combined with the ACCESS Segment Specific Information (SSI) field, which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A-000-000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as "AISL-January Anniversary." Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule*, Commerce stated that, "after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow."¹⁸ Accordingly, as stated above, the petitioner and the Government of China should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Government of China will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Government of China are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the AD and CVD orders with respect to R-125 from China pursuant to sections 706(a) and 736(a) of the Act. Interested parties can find a list of duty orders currently in effect at <https://enforcement.trade.gov/stats/iastats1.html>.

These orders are published in accordance with sections 706(a) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: February 25, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Orders

The merchandise covered by these orders is pentafluoroethane (R-125), or its chemical equivalent, regardless of form, type or purity level. R-125 has the Chemical Abstracts Service (CAS) registry number of 354-33-6 and the chemical formula C₂HF₅. R-125 is also referred to as Pentafluoroethane, Genetron HFC 125, Khladon 125, Suva 125, Freon 125, and Fc-125.

R-125 contained in blends that do not conform to ANSI/ASHRAE Standard 34 is included in the scope of these orders when R-125 constitutes the largest relative component by volume, on an actual percentage basis, of the blend.¹⁹ However, R-

¹⁸ See *Final Rule*, 86 FR at 52335.

¹⁹ "Largest relative component by volume, on an actual percentage basis" means that the percentage of R-125 contained in a blend is larger than the individual percentages of all the other components. For example, R-125 contained in a blend that does not conform to ANSI/ASHRAE Standard 34 and which contains 35% R-125 by volume is covered by the scope of the orders if no other component

Continued

¹⁴ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Final Rule*).

¹⁵ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

125 incorporated into a blend that conforms to ANSI/ASHRAE Standard 34 is excluded from the scope of these orders. When R-125 is blended with other products and otherwise falls under the scope of these orders, only the R-125 component of the mixture is covered by the scope of these orders.

Subject merchandise also includes purified and unpurified R-125 that is processed in a third country or otherwise outside the customs territory of the United States, including, but not limited to, purifying, blending, or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the in-scope R-

125. The scope also includes R-125 that is commingled with R-125 from sources not subject to these orders. Only the subject component of such commingled products is covered by the scope of these orders.

Excluded from the scope is merchandise covered by the scope of the antidumping order on *Hydrofluorocarbon Blends from the People's Republic of China*, including merchandise subject to the affirmative anti-circumvention determination in *Hydrofluorocarbon Blends from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order; Unfinished R-32/R-125 Blends*, 85 FR 15428 (March 18, 2020).

See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order, 81 FR 55436 (August 19, 2016) (the Blends Order).

R-125 is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2903.49.1010. Merchandise subject to the scope may also be entered under HTSUS subheadings 2903.49.0000 and 3827.11.0000, or 3827.39.0000. The HTSUS subheadings and CAS registry number are provided for convenience and customs purposes. The written description of the scope of the orders is dispositive.

Appendix II—Separate Rate Companies

Exporter	Producer
Non-individually-examined exporters receiving separate rates	Producers supplying the non-individually-examined exporters receiving separate rates
Huantai Dongyue International Trade Co. Ltd	Jinhua Binglong Chemical Technology Co., Ltd.
Shandong Dongyue Chemical Co., Ltd	Shandong Dongyue Chemical Co., Ltd.
Shandong Huaan New Material Co., Ltd	Shandong Huaan New Material Co., Ltd.
T.T. International Co., Ltd./T.T. International Co., Limited ²⁰	Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd.
T.T. International Co., Ltd./T.T. International Co., Limited	Zhejiang Quhua Fluor-Chemistry Co., Ltd.
T.T. International Co., Ltd./T.T. International Co., Limited	Zhejiang Sanmei Chemical Industry. Co., Ltd.
Zhejiang Yonghe Refrigerant Co., Ltd	Jinhua Yonghe Fluorochemical Co., Ltd.
Zibo Feiyuan Chemical Co., Ltd	Zibo Feiyuan Chemical Co., Ltd.

[FR Doc. 2022-04505 Filed 3-2-22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-874]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Preliminary Results of Countervailing Duty Administrative Review; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from India during the period of review, January 1, 2020, through December 31, 2020. Interested parties are invited to comment on these preliminary results.

DATES: Applicable March 3, 2022.

part of the blend equals or exceeds 35% of the volume of the blend.

²⁰ Commerce determined that T.T. International Co., Ltd. and T.T. International Co., Limited are a single entity (collectively, TTI).

¹ See *Initiation and Countervailing Duty Administrative Reviews*, 86 FR 17124 (April 1, 2021); see also *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's*

FOR FURTHER INFORMATION CONTACT:

Eliza Siordia or Eric Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3878 or (202) 482-1988, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2021, Commerce published a notice of initiation of an administrative review of the countervailing duty order on cold-drawn mechanical tubing from India.¹ On October 5, 2021, Commerce extended the time period for issuing these preliminary results by 117 days, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).² The revised deadline for these preliminary results is now February 25, 2022.

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision

Republic of China and India: Countervailing Duty Orders, 83 FR 4637 (February 1, 2018) (*Order*).

² See Memorandum, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review, 2020," dated October 5, 2021.

³ See Memorandum, "Decision Memorandum for the Preliminary Results of Countervailing Duty

Memorandum is included at the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The merchandise covered by the *Order* is cold-drawn mechanical tubing from India. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy, *i.e.*, a financial contribution that gives rise to a benefit to the recipient, and the subsidy is specific.⁴

Administrative Review: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India; 2020," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Companies Not Selected for Individual Review

The Act and Commerce's regulations do not directly address the subsidy rate to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 777A(e)(2) of the Act provides that "the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}." Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by weight-averaging the countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available.

Accordingly, to determine the rate for companies not selected for individual examination, Commerce's practice is to weight average the net subsidy rates for the selected mandatory companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.⁵ We preliminarily determine that Goodluck India Limited (Goodluck) and Tube Investments of India Ltd. (TII) received countervailing subsidies that are above *de minimis* and are not based entirely on facts available. Therefore, we preliminarily determine to apply the weighted-average of the net subsidy rates calculated for Goodluck and TII using publicly ranged sales data submitted by those respondents to the non-selected companies.⁶ The following companies are companies for which a review was requested, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent: KLT Automotive and Tubular Products Limited; Metamorphosis Engitech India Private

Limited; and Pennar Industries Limited India.

Preliminary Results of Review

For the period January 1, 2020, through December 31, 2020, we preliminarily find that the following net subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Goodluck India Limited ⁷	3.30
Tube Investments of India Ltd. ⁸	5.57
Review-Specific Average Rate Applicable to the Following	
KLT Automotive and Tubular Products Limited	3.96
Metamorphosis Engitech India Private Limited	3.96
Pennar Industries Limited India	3.96

Assessment Rate

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries in accordance with the final results of this review. If the assessment rate calculated in the final results is zero or *de minimis*, we will instruct CBP to liquidate all appropriate entries without regard to countervailing duties. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above, except, where the rate calculated in the final results is *de minimis*, no cash deposit will be required on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final

results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.⁹ Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.¹⁰ Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹¹ Case and rebuttal briefs should be filed using ACCESS¹² and must be served on interested parties.¹³ Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁴

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using Enforcement and Compliance's ACCESS system.¹⁵ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.¹⁶ 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

⁹ See 19 CFR 351.224(b).

¹⁰ See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

¹¹ See 19 CFR 351.309(c)(2) and (d)(2).

¹² See generally 19 CFR 351.303.

¹³ See 19 CFR 351.303(f).

¹⁴ See *Temporary Rule*.

¹⁵ See 19 CFR 351.310(c).

¹⁶ See 19 CFR 351.310.

⁵ See, e.g., *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010).

⁶ See Memorandum, "Calculation of Subsidy Rate for Non-Selected Companies Under Review," dated February 25, 2022.

⁷ Entries for Goodluck India Limited may have been made under the following company names: Goodluck India Limited (formerly Good Luck Steel Tubes Limited); Good Luck Steel Tubes Limited Good Luck House; and Good Luck Industries.

⁸ Tube Investments of India Ltd. is also known as Tube Investments of India Limited.

days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Final Results of Review

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: February 24, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Period of Review
- V. Rate for Non-Examined Companies
- VI. Subsidies Valuation Information
- VII. Benchmarks and Interest Rates
- VIII. Analysis of Programs
- IX. Recommendation

[FR Doc. 2022-04490 Filed 3-2-22; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty

order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation notice. **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act: In general, Commerce finds that determinations concerning whether particular companies should be “collapsed” (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any

company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) Identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.¹ Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v).

¹ See Trade Preferences Extension Act of 2015, Public Law 114-27, 129 Stat. 362 (2015).

If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section

773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later

than 20 days after submission of initial Section D responses.

Opportunity To Request a Review: Not later than the last day of March 2022,² interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period of review
Antidumping Duty Proceedings	
AUSTRALIA: Certain Uncoated Paper, A-602-807	3/1/21-2/28/22
BELGIUM: Acetone, A-423-814	3/1/21-2/28/22
BRAZIL: Certain Uncoated Paper, A-351- 842	3/1/21-2/28/22
CANADA: Iron Construction Castings, A-122-503	3/1/21-2/28/22
FRANCE: Brass Sheet & Strip, A-427-602	3/1/21-2/28/22
GERMANY: Brass Sheet & Strip, A-428-602	3/1/21-2/28/22
INDIA: Large Diameter Welded Pipe, A-533-881	3/1/21-2/28/22
INDIA: Off-The-Road Tires, A-533-869	3/1/21-2/28/22
INDIA: Sulfanilic Acid, A-533-806	3/1/21-2/28/22
INDONESIA: Certain Uncoated Paper, A-560-828	3/1/21-2/28/22
ITALY: Brass Sheet & Strip, A-475-601	3/1/21-2/28/22
PORTUGAL: Certain Uncoated Paper, A-471-807	3/1/21-2/28/22
REPUBLIC OF KOREA: Acetone, A-580-899	3/1/21-2/28/22
RUSSIA: Silicon Metal, A-821-817	3/1/21-2/28/22
SOUTH AFRICA: Acetone, A-791-824	3/1/21-2/28/22
SOUTH AFRICA: Carbon and Alloy Steel Wire Rod, A-791-823	3/1/21-2/28/22
TAIWAN: Light-Walled Rectangular Welded Carbon Steel Pipe and Tube, A-583-803	3/1/21-2/28/22
THAILAND: Circular Welded Carbon Steel Pipes and Tubes, A-549-502	3/1/21-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Ammonium Sulfate, A-570-049	3/1/21-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Amorphous Silica Fabric, A-570-038	3/1/21-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Biaxial Integral Geogrid Products, A-570-036	3/1/21-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Carbon and Alloy Steel Cut-To-Length Plate, A-570-047	3/1/21-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Corrosion Inhibitors, A-570-122 9/10/20-2/28/22.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Plastic Decorative Ribbon, A-570-075	3/1/21-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Vertical Shaft Engines Between 22C and 999CC, and Parts Thereof, A-570-119	8/19/20-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Austenitic Stainless Pressure Pipe, A-570-930	3/1/21-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Difluoromethane (R-32), A-570-121	8/27/20-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Glycine, A-570-836	3/1/21-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Large Diameter Welded Pipe, A-570-077	3/1/21-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Sodium Hexametaphosphate, A-570-908	3/1/21-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Tissue Paper Products, A-570-894	3/1/21-2/28/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Uncoated Paper, A-570-022	3/1/21-2/28/22
UKRAINE: Carbon and Alloy Steel Wire Rod, A-823-816	3/1/21-2/28/22
Countervailing Duty Proceedings	
INDIA: Fine Denier Polyester Staple Fiber, C-533-876	1/1/21-12/31/21
INDIA: Large Diameter Welded Pipe, C-533-882	1/1/21-12/31/21
INDIA: Off-The-Road Tires, C-533-870	1/1/21-12/31/21
INDIA: Sulfanilic Acid, C-533-807	1/1/21-12/31/21
INDONESIA: Certain Uncoated Paper, C-560-829	1/1/21-12/31/21
IRAN: In-Shell Pistachios, C-507-501	1/1/21-12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Ammonium Sulfate, C-570-050	1/1/21-12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Amorphous Silica Fabric, C-570-039	1/1/21-12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Biaxial Integral Geogrid Products, C-570-037	1/1/21-12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Carbon and Alloy Steel Cut-To-Length Plate, C-570-048	1/1/21-12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Certain Corrosion Inhibitors, C-570-123 7/13/20-12/31/21.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Plastic Decorative Ribbon, C-570-076	1/1/21-12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Certain Vertical Shaft Engines Between 22C and 999CC, and Parts Thereof, C-570-120 6/19/20-12/31/21.	
THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Austenitic Stainless Pressure Pipe, C-570-931	1/1/21-12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Fine Denier Polyester Staple Fiber, C-570-061	1/1/21-12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Large Diameter Welded Pipe, C-570-078	1/1/21-12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Certain Uncoated Paper, C-570-023	1/1/21-12/31/21
TURKEY: Circular Welded Carbon Steel Pipes and Tubes, C-489-502	1/1/21-12/31/21
Suspension Agreements	
None.	

² Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.³

Commerce no longer considers the non-market economy (NME) entity as an

exporter conditionally subject to an antidumping duty administrative reviews.⁴ Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.⁵ In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at <https://access.trade.gov>.⁶ Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.⁷

Commerce will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding,

or Suspended Investigation" for requests received by the last day of March 2022. If Commerce does not receive, by the last day of March 2022, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled "*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*" in the **Federal Register**.⁸ On September 27, 2021, Commerce also published the notice entitled "*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*" in the **Federal Register**.⁹ The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.¹⁰

In accordance with the *Procedural Guidance*, for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list

⁴ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

⁵ In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

⁶ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

⁷ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 41363 (July 10, 2020).

⁸ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Final Rule*).

⁹ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

¹⁰ *Id.*

³ See the Enforcement and Compliance website at <https://www.trade.gov/us-antidumping-and-countervailing-duties>.

for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called “AISL-Annual Inquiry Service List.”¹¹

As mentioned in the *Procedural Guidance*, beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.¹² Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) New interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) Interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year’s annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from “Active” to “Needs Amendment” for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule*,¹³ once the petitioners and foreign governments have submitted an entry of appearance for the first time,

¹¹ This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A-000-000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as “AISL-January Anniversary.” Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

¹² See *Procedural Guidance*, 86 FR at 53206.

¹³ See *Final Rule*, 86 FR at 52335.

they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties’ amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at <https://access.trade.gov>.

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule*, Commerce stated that, “after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.”¹⁴ Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 24, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022-04502 Filed 3-2-22; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB627]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Pier 58 Reconstruction and Pier 63 Removal Projects in Seattle, Washington

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

ACTION: Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewals.

SUMMARY: NMFS has received a request from the City of Seattle (City) for authorization to take marine mammals incidental to the Pier 58 Reconstruction Project and Pier 63 Removal Project in Seattle, Washington. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two incidental harassment authorizations (IHAs) to the City to incidentally take, by Level A and Level B harassment only, marine mammals during the specified activities. NMFS is also requesting comments on possible one-time, one-year renewals of each IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 4, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to ITP.Fowler@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act without change. All personal identifying

¹⁴ *Id.*

information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO)

216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA requests.

Summary of Request

On July 21, 2021, NMFS received two requests from the City for an IHA to take marine mammals incidental to the Pier 63 Removal Project and, separately, the Pier 58 Reconstruction Project on the waterfront in downtown Seattle, Washington. The City submitted revised applications for each project on September 29, 2021 and January 3, 2022. Both applications were deemed adequate and complete on January 26, 2022. The City’s request is for take of a small number of 12 species of marine mammals, by Level B harassment only for the Pier 63 Removal Project, and by Level A and Level B harassment for the Pier 58 Reconstruction Project. Neither the City nor NMFS expects serious injury or mortality to result from these activities and, therefore, IHAs are appropriate.

Description of Proposed Activities

Overview

The City is proposing to reconstruct Waterfront Park along the Elliott Bay shoreline in Seattle, Washington. When replaced, Waterfront Park will be renamed Pier 58 in reference to the original structure and to avoid confusion with the larger waterfront park promenade that will be reconstructed along Alaskan Way. The City intends to repair structural and safety deficiencies and optimize public access and recreational uses of the piers, including reconfiguring Waterfront Park to better accommodate programming while providing views of Elliott Bay toward the Olympic Mountain Range.

The Pier 58 reconstruction project includes vibratory removal of existing in-water piles and vibratory and impact installation of new piles to support the expanded overwater structure.

The City also plans to remove Pier 63 from the downtown Seattle waterfront. The structural integrity of the pier has deteriorated and the pier has been closed to the public for safety. Removing Pier 63 will leave the nearshore environment open for improved ecosystem function and salmonid migration. The project includes vibratory removal of existing in-water piles; no plans have been made to reconstruct Pier 63, therefore no new piles will be installed.

The City submitted an individual IHA application for each project. However, given the City applied for both projects concurrently, the projects’ close proximity to each other, and similarities in the proposed activities and potential impacts on marine mammals, NMFS is using this single **Federal Register** notice to solicit public comments on the issuance of the two similar, but separate, IHAs.

Dates and Duration

In-water work at both piers will occur during the in-water work window designated by NMFS, the U.S. Army Corps of Engineers, and the Washington State Department of Fish and Wildlife, which is imposed to avoid in-water construction when Endangered Species Act (ESA)-listed juvenile salmonids are most likely to be present. For the Seattle waterfront, this window is anticipated to be September 1 through February 15. The City expects Pier 58 reconstruction (including above-water construction that does not have the potential to take marine mammals) to take a little over a year to complete, from August 2022 to December 2023, with a total of 70 days of in-water work expected during the designated window. Funding for this project has been secured. Pier 63 will be removed during one in-water work season, with a total of 47 days of in-water work expected. Pier 63 may be removed during the September 2022 to February 2023 or September 2023 to February 2024 work window, depending on when funding is made available. Both IHAs would be valid from August 1, 2022 through July 31, 2023. If funding for Pier 63 removal is not authorized during that period, the City will request the IHA be reissued for the following year. Due to this possibility, the analysis that follows for the Pier 63 Removal Project considers possible effects on marine mammals during either the August 2022 through July 2023 period or the August 2023

through July 2024 period, based on the current best available science.

Specific Geographic Region

Both piers are located along the Seattle waterfront on Elliott Bay, which is an 8 square mile (mi²) (21 square kilometer (km²)) urban embayment in central Puget Sound. Pier 58 is approximately ¼ mile (0.4 km) north of Pier 63, with several occupied piers in between. The Seattle waterfront includes land and piers used for businesses, residences, transportation facilities (e.g., ferries, cargo ships, cruise ships), public services (e.g., fire station, utilities), city parks, and other recreational elements. West Point and Alki Point are considered the northern and southern entrances of Elliott Bay, respectively, with downtown Seattle serving as the eastern boundary of the bay. Bainbridge Island is located approximately 7 miles (11.3 km) to the west of downtown Seattle. The inner bay receives fresh water from the Duwamish River and most of the stormwater runoff from approximately 26 mi² (67 km²) of highly developed land in metropolitan Seattle. Elliott Bay is an important industrial region and home to the Port of Seattle, which, coupled with the Port of Tacoma located approximately 22 miles (35 km) to the south, ranked as the nation’s fifth busiest U.S. seaport in 2020 (Northwest Seaport Alliance, 2021). Water depths in the area range from less than 10 feet (ft; 3.05 meters (m)) along the seawall to nearly 600 ft (183 m) at the outer extent of the bay.

Detailed Description of Specific Activities

Waterfront Park (hereafter referred to as Pier 58) was a public pier with substantial structural deficiencies. The pier pulled away from the waterfront in August 2020 and was closed to public access. Based on the known structural deficiencies, the City determined that emergency demolition was required for public safety. During initial demolition work in September 2020, a substantial portion of the pier collapsed into the water, thus necessitating an additional

in-water activity of concrete demolition. The City conducted marine mammal monitoring during the emergency demolition work to avoid take of Southern Resident killer whales (*Orcinus orca*) and document occurrence and take of other marine mammals. The City removed the minimum number of piles and over-water structures necessary to protect the integrity of the seawall and maintain a safe environment. The remainder of the existing piles will be removed and replaced under the proposed IHA.

Pier 58 will be reconstructed to maintain public park space and improve access, safety, and flexibility in use, while offering expansive views of Elliott Bay and the Olympic Mountains. The reconstructed pier will be 47,280 square feet and will include the installation of 120 permanent 30-inch steel piles. The decking will consist of both pre-cast concrete panels and a cast-in-place concrete deck slab. There will also be a 770 square foot area of grating to provide additional lighting to the existing intertidal salmon migratory corridor. The new park will feature a new public plaza, maintain the Fitzgerald fountain, and create a new children’s play area, seating areas, and a large lawn and trees in planters to provide shade.

The reconstructed Pier 58 is also designed with an approximately 4,962-square-foot open water habitat area to provide natural lighting of the shallow water habitat near the shore (located at depths less than –10 feet mean lower-low water (MLLW)) that will enhance nearshore habitat for a variety of species, such as juvenile salmon that use the nearshore area during migratory periods and comprise part of the prey base for many marine mammal species. An expanded intertidal habitat bench with the top surface at MLLW, sloping to a foundation rock sill would be installed in this new open water area to facilitate recruitment of native invertebrate and algal species. Due to the new configuration, the replacement pier will cover up an existing habitat substrate patch that was created as part of the Elliot Bay Seawall Project. To

address loss of function of this habitat feature, the City will install an equal area of new habitat substrate enhancement to replicate the existing feature adjacent to Pier 58, further north between the Seattle Aquarium (Pier 59) and Pier 62. The new substrate enhancement will improve benthic habitat for juvenile crabs and other invertebrates and will generally improve productivity and support food web processes. The substrate enhancement will consist of an approximately 2,000 square foot, 2-foot thick layer of 1.5-inch subtidal habitat gravel and will be located at elevations between approximately –10 to –20 feet MLLW. This habitat work will not result in the take of marine mammals.

A total of 31 existing steel H-piles and timber piles will be removed in whole, wherever possible, by pulling the piles using a vibratory extraction method or clamshell bucket. If a timber pile breaks above the mudline during removal, the City will attempt to pull the remainder of the pile in a way that minimizes disturbance of sediment; otherwise, it will be cut below the mudline. All creosote-treated wood and steel that is removed will be disposed of in accordance with appropriate regulations.

Once all existing piles have been removed, the City will begin the reconstruction by using a vibratory hammer to install 100 24-inch steel pipe template piles, which will all subsequently be removed using the same vibratory hammer. The City anticipates the contractor will use approximately 6 template piles at a time, for every 4 permanent piles, so that the template piles can be re-used. The City will then install a total of 120 permanent 30-inch steel pipe piles using a vibratory hammer, followed by an impact hammer to “proof” the pilings to their maximum depth and load-bearing capacity. All impact pile driving will be conducted using a bubble curtain surrounding the pile (see Proposed Mitigation). The City does not plan to conduct pile driving with multiple hammers concurrently.

TABLE 1—SUMMARY OF PILES TO BE INSTALLED AND REMOVED AT PIER 58

Pile type and size	Method	Number of piles	Maximum piles per day	Duration or strikes per pile	Maximum days of pile driving
Steel H-pile, 14-inch timber pile	Vibratory removal	31	20	20 minutes ...	10
24-inch steel pipe pile	Vibratory installation	^a 100	10	15 minutes ...	10
24-inch steel pipe pile	Vibratory removal	^a 100	10	5 minutes	10
30-inch steel pipe pile	Vibratory installation	^b 120	4	45 minutes ...	^c 40
30-inch steel pipe pile	Impact installation	^b 120	3	400 strikes ...	^c 40

TABLE 1—SUMMARY OF PILES TO BE INSTALLED AND REMOVED AT PIER 58—Continued

Pile type and size	Method	Number of piles	Maximum piles per day	Duration or strikes per pile	Maximum days of pile driving
Total	Vibratory and impact ...	251	.....	.....	70

^a These same 100 piles will be installed and later removed.

^b These same 120 piles will be installed first using a vibratory hammer, than finished with an impact hammer.

^c Vibratory and impact installation of 30-inch piles will occur on the same 40 days.

Pier 63 was previously used as a public open space where concerts and special events were hosted, but the pier has deteriorated and can no longer support heavy loads and is no longer in use. The City plans to demolish and remove the existing pier (with a total over-water area of 35,108 square feet), including removal of 900 14-inch timber piles and 8 30-inch steel pipe piles. During demolition, broken piles and debris from previous pier configurations will also be removed, as feasible, to comply with Washington State

Department of Natural Resources lease terms. The number of broken piles to be removed is unknown but would be removed with a clamshell bucket and pulled or cut below the mudline. Broken piles and debris removed without the use of a vibratory hammer is not expected to result in take of marine mammals.

During pile removal for Pier 63, decking and framing will be removed using heavy equipment or by workers on the deck. Timber piles will be removed in whole, wherever possible,

by pulling the piles using a vibratory extraction method or clamshell bucket. If a pile breaks above the mudline during removal, then an attempt will be made to pull the remainder of the pile in a way that minimizes disturbance of sediments; otherwise, it will be cut below the mudline. All creosote-treated wood that is removed will be disposed of in accordance with appropriate regulations. Steel piles will be removed using vibratory extraction. The vibratory hammer will be positioned on a barge adjacent to the pier.

TABLE 2—SUMMARY OF PILES TO BE REMOVED AT PIER 63

Pile type	Number of piles	Maximum piles removed per day	Duration per pile (minutes)	Maximum days of pile removal
14-inch timber pile	900	20	20	45
30-inch steel pipe pile	8	4	45	2

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the applications summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species, and can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. All of this information was fully considered and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS’s Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine->

mammal-stock-assessments) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS’s website (<https://www.fisheries.noaa.gov/find-species>).

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for both proposed IHAs, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS’s SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources

are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS’s stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All values for each managed stock presented in Table 3 are the most recent available at the time of publication and are available in the 2020 SARs (Carretta *et al.*, 2021, Muto *et al.*, 2021) and draft 2021 SARs (available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>).

TABLE 3—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae: Gray whale	<i>Eschrichtius robustus</i>	Eastern N Pacific	- , - , N	26,960 (0.05, 25,849, 2016) ..	801	131
Family Balaenopteridae (rorquals):						
Humpback whale	<i>Megaptera novaeangliae</i>	California/Oregon/Washington	E, D, Y	4,973 (0.05, 4,776, 2018)	28.7	≥48.6
Minke whale	<i>Balaenoptera acutorostrata</i>	California/Oregon/Washington	- , - , N	915 (0.792, 509, 2018)	4.1	≥0.59
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Long Beaked Common Dolphin	<i>Delphinus capensis</i>	California	- , - , N	83,379 (0.216, 69,636, 2018)	668	≥29.7
Bottlenose Dolphin	<i>Tursiops truncatus</i>	California Coastal	- , - , N	453 (0.06, 346, 2011)	2.7	≥2.0
Killer Whale	<i>Orcinus orca</i>	Southern Resident	E, D, Y	72 (N/A, 72, 2020)	0.13	≥0.4
		West Coast Transient	- , - , N	349 ⁴ (N/A, 349, 2018)	3.5	0.4
Family Phocoenidae (por- poises):						
Harbor Porpoise	<i>Phocoena phocoena</i>	Washington Inland Waters	- , - , N	11,233 (0.37, 8,308, 2015)	66	≥7.2
Dall's Porpoise	<i>Phocoenoides dalli</i>	California/Oregon/Washington	- , - , N	16,498 (0.61, 10,286, 2019) ..	99	≥0.66
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	<i>Zalophus californianus</i>	U.S.	- , - , N	257,606 (N/A, 233,515, 2014)	14,011	>320
Steller Sea Lion	<i>Eumetopias jubatus</i>	Eastern	- , - , N	43,201 ⁵ (see SAR, 43,201, 2017).	2,592	112
Family Phocidae (earless seals):						
Harbor Seal	<i>Phoca vitulina</i>	Washington Northern Inland Waters.	- , - , N	11,036 ⁶ (UNK, UNK, 1999) ...	UND	9.8
Northern Elephant Seal ...	<i>Mirounga angustirostris</i>	California Breeding	- , - , N	187,386 (N/A, 85,369, 2013)	5,122	13.7

¹ ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

³ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual mortality/serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range.

⁴ Based on counts of individual animals identified from photo-identification catalogues. Surveys for abundance estimates of these stocks are conducted infrequently.

⁵ Best estimate of pup and non-pup counts, which have not been corrected to account for animals at sea during abundance surveys.

⁶ The abundance estimate for this stock is greater than eight years old and is therefore not considered current. PBR is considered undetermined for this stock, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

As indicated above, all 12 species (with 13 managed stocks) in Table 3 temporally and spatially co-occur with the activities to the degree that take is reasonably likely to occur, and we propose authorizing it. The Pacific white-sided dolphin (*Lagenorhynchus obliquidens*) is a rare visitor to the inland waters of Puget Sound (Orca Network, 2021). However, they have not been observed during recent marine mammal monitoring for projects in Elliott Bay (e.g., WSDOT 2021; Anchor QEA 2019) and are considered unlikely to occur in the area during the City's proposed activities. The City has not requested take of Pacific white-sided dolphins for either project and NMFS does not anticipate or propose to authorize take of this species. Therefore, Pacific white-sided dolphins are not discussed further in this document.

Humpback Whale

Humpback whales are found in coastal waters of Washington as they migrate from feeding grounds in Alaska to California to winter breeding grounds in Mexico. Humpbacks used to be considered only rare visitors to Puget Sound. In 1976 and 1978, two sightings were reported in Puget Sound and one sighting was reported in 1986 (Osborne *et al.*, 1988; Calambokidis and Steiger 1990; Calambokidis and Baird 1994). Humpback whale occurrence in Puget Sound has been steadily increasing since 2000, with some individuals remaining in the area through the winter (Calambokidis *et al.*, 2018). Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.*, 2015), NMFS delineated 14 distinct population segments (DPSs) with different listing

statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 1. Because MMPA stocks cannot be portioned, *i.e.*, parts managed as ESA-listed while other parts managed as not ESA-listed, until such time as the MMPA stock delineations are reviewed in light of the DPS designations, NMFS considers the existing humpback whale stocks under the MMPA that overlap with endangered or threatened DPSs to be depleted for MMPA management purposes (e.g., selection of a recovery factor, stock status). All humpback whales in the project areas would be from the California/Oregon/Washington stock. Within Puget Sound, three DPSs may occur and be taken incidental to the City's activities: The Hawai'i DPS (not listed), Mexico DPS (threatened),

and Central America DPS (endangered). According to Wade *et al.* (2021), the probability that humpback whales encountered in Washington and Southern British Columbia waters are as follows: Hawai'i DPS, 69 percent; Mexico DPS, 25 percent; and Central America DPS, 6 percent. We therefore assume that the numbers of humpback whales taken incidental to the City's proposed activities would fall under the same relative proportions. Critical habitat for Mexico and Central America DPS humpback whales has been established on the outer coast of Washington (86 FR 21082; April 21, 2021) but none has been designated within Puget Sound.

Entanglement in fishing gear and marine debris is considered a primary threat to humpback whales in the northeast Pacific. Entanglements are the most commonly identified cause of death and injury among humpback whales along California, Oregon, and Washington (Carretta *et al.* 2013, 2019), and probably cause a modest reduction in the size or growth rate of the Central America and Mexico DPSs (Bettridge *et al.*, 2015). Humpbacks were the second most frequently entangled whale species (after gray whales) in this region from 1982 to 2013, averaging 2.1 reports per year (Sato and Wiley, 2021). However, actual numbers of entanglements were likely much higher, as indicated by photographic data showing scarring from past incidents on half or more of the humpback whales occurring off these states (Robbins *et al.*, 2007). Most humpback entanglements in Washington involve trap/pot gear, especially from commercial Dungeness crab fisheries (Saez *et al.*, 2013; NMFS 2017).

Humpback whales are one of the most commonly vessel-struck whale species in some areas of the world (Jensen and Silber 2004; Neilson *et al.*, 2012; Hill *et al.*, 2017). For example, in Alaskan and Hawaiian waters, members of the Hawaii DPS experienced an average of at least 4.0 deaths and serious injuries per year because of collisions from 2012 to 2016 (Muto *et al.*, 2019). In Washington, just two humpback whales were reported killed by vessel strikes from 1980 to 2017 (Douglas *et al.*, 2008; Carretta *et al.*, 2013, 2019). The state has several areas where heavy vessel traffic poses a higher collision risk for humpback whales. These include the mouths of the Strait of Juan de Fuca and Columbia River, the north-south shipping lane that parallels the outer coast, and the Strait of Juan de Fuca and other parts of the Salish Sea (Williams and O'Hara 2010; Nichol *et al.*, 2017; Rockwood *et al.*, 2017).

Gray Whale

Gray whales generally spend the summer and fall in Arctic feeding grounds and winter to early spring in Mexican breeding areas. Between October and February, the species migrates south along the U.S. West Coast, returning north between February and July (Carretta *et al.*, 2021). A subpopulation of the Eastern North Pacific stock, referred to as the Pacific Coast Feeding Group (PCFG), remains along the Washington and Oregon coast to feed for extended periods while the rest of the stock continues along their migratory path (Calambokidis *et al.*, 2018). Like humpback whales, occurrence of gray whales in Puget Sound has been steadily increasing in recent years. Occurrence of gray whales in Puget Sound is generally highest between February and May. Most gray whales remain further north in Puget Sound, concentrating in the waters around Whidbey Island, but some venture south, including into Elliott Bay near the proposed activities (Orca Network, 2021).

Biologically Important Areas (BIAs) for feeding gray whales along the coasts of Washington, Oregon, and California have been identified, including northern Puget Sound, Northwestern Washington, and Grays Harbor in Washington, Depoe Bay and Cape Blanco and Orford Reef in Oregon, and Point St. George in California; most of these areas are of importance from late spring through early fall (Calambokidis *et al.*, 2015). BIAs have also been identified for migrating gray whales along the entire coasts of Washington (including the inland waters of Puget Sound), Oregon, and California; although most whales travel within 10 km from shore, the BIAs were extended out to 47 km from the coastline (Calambokidis *et al.*, 2015).

On May 30, 2019, NMFS declared an unusual mortality event (UME) for gray whales after elevated numbers of strandings occurred along the U.S. west coast. As of January 7, 2022, a total of 502 stranded gray whales have been reported, including 256 in the United States (117 in Alaska, 56 in Washington, 12 in Oregon, and 71 in California), 225 in Mexico, and 21 in Canada. Full or partial necropsy examinations were conducted on a subset of the whales. Preliminary findings in several of the whales have shown evidence of emaciation. These findings are not consistent across all of the whales examined, so more research is needed. The UME is ongoing, and NMFS continues to investigate the cause(s). Additional information about the UME

is available at <https://www.fisheries.noaa.gov/national/marine-life-distress/2019-2020-gray-whale-unusual-mortality-event-along-west-coast>.

Minke Whale

The International Whaling Commission (IWC) recognizes three stocks of minke whales in the North Pacific: The Sea of Japan/East China Sea, the rest of the western Pacific west of 180° N, and the remainder of the Pacific (Donovan 1991). Minke whales are relatively common in the Bering and Chukchi seas and in the Gulf of Alaska, but are not considered abundant in any other part of the eastern Pacific (Brueggeman *et al.*, 1990). In the far north, minke whales are thought to be migratory, but they are believed to be year-round residents in coastal waters off the west coast of the United States (Dorsey *et al.*, 1990).

Minke whales are reported in Washington inland waters year-round, although few are reported in the winter (*i.e.*, during the anticipated in-water work window for these projects; Calambokidis and Baird 1994). They are relatively common in the San Juan Islands and Strait of Juan de Fuca (especially around several of the banks in both the central and eastern Strait), but are relatively rare in Puget Sound and the Orca Network has no sighting records of minke whales in the project areas.

Killer Whale

There are three distinct ecotypes, or forms, of killer whales recognized in the north Pacific: Resident, transient, and offshore. The three ecotypes differ morphologically, ecologically, behaviorally, and genetically. Resident killer whales exclusively prey upon fish, with a clear preference for salmon (Ford and Ellis 2006; Hanson *et al.*, 2010; Ford *et al.*, 2016), while transient killer whales exclusively prey upon marine mammals (Carretta *et al.*, 2019). Less is known about offshore killer whales, but they are believed to consume primarily fish, including several species of shark (Dahlheim *et al.*, 2008). Currently, there are eight killer whale stocks recognized in the U.S. Pacific (Carretta *et al.*, 2021; Muto *et al.*, 2021). Of those, individuals from the Southern Resident stock and West Coast Transient stock may occur in the Seattle area and be taken incidental to the City's proposed activities.

The Southern Resident killer whale (SRKW) population is comprised of three pods, J, K, and L pods, which typically travel independent of each other. The stock occurs for part of the

year in the inland waterways of the Salish Sea, including Puget Sound, the Strait of Juan de Fuca, and the southern Strait of Georgia mostly during the spring, summer, and fall. Their movement patterns appear related to the seasonal availability of prey, especially Chinook salmon (*Oncorhynchus tshawytscha*). They also move to coastal waters, primarily off Washington and British Columbia, in search of suitable prey, and have been observed as far as central California and southeast Alaska (NMFS 2019). During the fall, SRKW, especially J pod, expand their movements into Puget Sound, likely taking advantage of chum (*Oncorhynchus keta*) and Chinook salmon runs (Hanson *et al.*, 2021).

The SRKW DPS was listed as endangered under the ESA in 2005 after a nearly 20 percent decline in abundance between 1996 and 2001 (70 FR 69903; November 18, 2005). As compared to stable or growing populations, the DPS reflects lower fecundity and has demonstrated little to no growth in recent decades, and in fact has declined further since the date of listing (NMFS 2019). The population abundance listed in the draft 2021 SARs is 72 individuals, from the July 1, 2020 annual census conducted by the Center for Whale Research (Carretta *et al.*, 2021); since that date, two adult SRKW have died or are presumed dead, and three calves were born, bringing the current abundance to 73 whales (Orca Network, 2021).

Designated ESA critical habitat for SRKW includes the inland waters of Washington relative to a contiguous shoreline delimited by the line at a depth of 6.1 m relative to extreme high water (71 FR 69054; November 29, 2006). The Seattle waterfront is in the Puget Sound segment of the designated critical habitat, which is defined as the area south of the Deception Pass Bridge, west of the entrance to Admiralty Inlet, and north of the Hood Canal Bridge. SRKW have been observed in this area in all seasons but most occurrence in this area typically correlates with fall salmon runs, which occur during the anticipated in-water work window for these projects (NMFS 2006).

In contrast to SRKW, which exclusively prey on fish, the main diet of transient killer whales consists of marine mammals. Within Puget Sound, transient killer whales primarily hunt pinnipeds and porpoises, though some groups will occasionally target larger whales. The West Coast Transient stock of killer whales occurs from California through southeast Alaska (Muto *et al.*, 2021). The seasonal movements of transients are largely unpredictable,

although there is a tendency to investigate harbor seal haulouts off Vancouver Island more frequently during the pupping season in August and September (Baird 1994; Ford 2014). Transient killer whales have been observed in central Puget Sound in all months (Orca Network 2021).

Bottlenose Dolphin

Bottlenose dolphins are distributed worldwide from approximately 45° N to 45° S. Bottlenose dolphins inhabiting west coast U.S. waters are considered to be in either the California coastal stock, which ranges from Mexico to the San Francisco area within approximately 1 kilometer of shore, or the California/Oregon/Washington offshore stock, which is most commonly found along the California coast, northward to about the Oregon border. NMFS offshore surveys from 1991 to 2014 resulted in no sightings during study transects off the Oregon or Washington coasts (Carretta *et al.*, 2019). In September 2017, however, multiple sightings of a bottlenose dolphin throughout the Puget Sound and in Elliott Bay were reported to Cascadia Research Collective and Orca Network. One of the individuals was identified as belonging to the California coastal stock (Cascadia Research Collective, 2017). Bottlenose dolphins are considered rare in Puget Sound but occasional sightings have continued since the initial reports in 2017 (Orca Network, 2021).

Long-Beaked Common Dolphin

Long-beaked common dolphins are commonly found along the U.S. West Coast, from Baja, California (including the Gulf of California), northward to about central California (Carretta *et al.*, 2020). The Salish Sea is not considered part of their typical range (Carretta *et al.*, 2020), but there have been reports of long-beaked common dolphins in inland waters. Two individual common dolphins were observed in August and September of 2011 (Whale Museum, 2015). The first record of a pod of long-beaked common dolphins in this area came in the summer of 2016. Beginning on June 16, 2016 long-beaked common dolphins were observed near Victoria, B.C. Over the following weeks, a pod of 15 to 20 (including a calf) was observed in central and southern Puget Sound. They were positively identified as long-beaked common dolphins (Orca Network 2016). Two long-beaked common dolphins were observed by Washington State Department of Transportation (WSDOT) marine mammal monitors during construction at Colman Dock (Pier 52) during the

2017–18 construction window (WSDOT 2019).

Harbor Porpoise

In the eastern North Pacific Ocean, harbor porpoise are found in coastal and inland waters from Point Barrow, along the Alaskan coast, and down the west coast of North America to Point Conception, California (Gaskin 1984). Harbor porpoise are known to occur year-round in the inland trans-boundary waters of Washington and British Columbia, Canada (Osborne *et al.*, 1988), and along the Oregon/Washington coast (Barlow 1988, Barlow *et al.*, 1988, Green *et al.*, 1992). There was a significant decline in harbor porpoise sightings within southern Puget Sound between the 1940s and 1990s but sightings have increased seasonally in the last 10 years (Carretta *et al.*, 2019). Annual winter aerial surveys conducted by the Washington Department of Fish and Wildlife from 1995 to 2015 revealed an increasing trend in harbor porpoise in Washington inland waters, including the return of harbor porpoise to Puget Sound. The data suggest that harbor porpoise were already present in Juan de Fuca, Georgia Straits, and the San Juan Islands from the mid-1990s to mid-2000s, and then expanded into Puget Sound and Hood Canal from the mid-2000s to 2015, areas they had used historically but abandoned. Changes in fishery-related entanglement was suspected as the cause of their previous decline and more recent recovery, including a return to Puget Sound (Evenson *et al.*, 2016). Seasonal surveys conducted in spring, summer, and fall 2013–2015 in Puget Sound and Hood Canal documented substantial numbers of harbor porpoise in Puget Sound. Observed porpoise numbers were twice as high in spring as in fall or summer, indicating a seasonal shift in distribution of harbor porpoise (Smultea 2015). The reasons for the seasonal shift and for the increase in sightings is unknown. Marine mammal monitors have reported few sightings of harbor porpoises in Elliott Bay during recent construction projects at the Seattle waterfront (*e.g.*, WSDOT 2019).

Dall's Porpoise

Dall's porpoises are endemic to temperate waters of the North Pacific Ocean. Off the U.S. west coast, they are commonly seen in shelf, slope, and offshore waters (Morejohn 1979). Sighting patterns from aerial and shipboard surveys conducted in California, Oregon, and Washington (Green *et al.*, 1992, 1993; Forney and Barlow 1998; Barlow 2016) suggest that north-south movement between these

states occurs as oceanographic conditions change, both on seasonal and inter-annual time scales. Dall's porpoise are considered rare in Puget Sound; no observations of Dall's porpoises have been reported during recent construction projects at the Seattle waterfront (e.g., WSDOT 2019).

California Sea Lion

The California sea lion is the most frequently sighted pinniped found in Washington waters and uses haul-out sites along the outer coast, Strait of Juan de Fuca, and in Puget Sound. Haul-out sites are located on jetties, offshore rocks and islands, log booms, marina docks, and navigation buoys. This species also may be frequently seen resting in the water, rafted together in groups in Puget Sound. Only male California sea lions migrate into Pacific Northwest waters, with females remaining in waters near their breeding rookeries off the coast of California and Mexico. The California sea lion was considered rare in Washington waters prior to the 1950s. More recently, peak numbers of 3,000 to 5,000 animals move into the Salish Sea during the fall and remain until late spring, when most return to breeding rookeries in California and Mexico (Jeffries *et al.*, 2000).

California sea lions are often observed in the area of potential effects and are known to be comfortable and seemingly curious around human activities. There are four documented haul-out areas near Bainbridge Island, approximately 6 miles (9.6 km) from Pier 63, and two documented haul-out areas between Bainbridge Island and Magnolia. The haul-outs consist of buoys and floats, and some are within the area of potential effects, but at the outer extent, and some are just outside the area of potential effects (Jeffries *et al.*, 2000). California sea lions are regularly observed in Elliott Bay, especially around two navigational buoys near Alki Point, at the southwest edge of Elliott Bay. During construction at Pier 62 in 2018 and 2019, between 0 and 31 California sea lions were observed in the project area per day, with an average of 6 per day. More than half of the reported takes of California sea lions during this project were animals near Alki Point (Anchor QEA 2018, 2019).

Steller Sea Lion

Steller sea lions range along the North Pacific Rim from northern Japan to California (Loughlin *et al.*, 1984). There are two separate stocks of Steller sea lions, the Eastern U.S. stock, which occurs east of Cape Suckling, Alaska (144° W), and the Western U.S. stock,

which occurs west of that point. Only the Western stock of Steller sea lions, which is designated as the Western DPS of Steller sea lions, is listed as endangered under the ESA (78 FR 66139; November 4, 2013). Unlike the Western U.S. stock of Steller sea lions, there has been a sustained and robust increase in abundance of the Eastern U.S. stock throughout its breeding range. The eastern stock of Steller sea lions has historically bred on rookeries located in Southeast Alaska, British Columbia, Oregon, and California. However, within the last several years a new rookery has become established on the outer Washington coast (at the Carroll Island and Sea Lion Rock complex), with more than 100 pups born there in 2015 (Muto *et al.*, 2020).

Steller sea lions use haul-out locations in Puget Sound, and may occur at the same haul-outs as California sea lions, but are considered rare visitors to Elliott Bay and the Seattle waterfront area. Few Steller sea lions have been observed during monitoring of recent construction projects in the area; typically fewer than 5 total observations per year (e.g., Anchor QEA 2018, 2019). However, a total of 54 Steller sea lions were observed over 99 days of monitoring during the 2017–2018 work season at Colman Dock (Pier 52; WSDOT 2019).

Northern Elephant Seal

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.* 1994), from December to March (NOAA 2015). Males migrate to the Gulf of Alaska and western Aleutian Islands along the continental shelf to feed on benthic prey, while females migrate to pelagic areas in the Gulf of Alaska and the central North Pacific Ocean to feed on pelagic prey (Le Boeuf *et al.*, 2000). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons (Carretta *et al.*, 2015).

Individual elephant seals have been reported in Elliott Bay and central Puget Sound (e.g., WSDOT 2019) but are generally considered rare in Puget Sound. However, a female elephant seal has been reported hauled-out in Mutiny Bay on Whidbey Island periodically since 2010. She was observed alone for her first three visits to the area, but in March 2015, she was seen with a pup. Since then, she has produced two more pups, born in 2018 and 2020. Northern elephant seals generally give birth in

January but this individual has repeatedly given birth in March. She typically returns to Mutiny Bay in April and May to molt. Her pups have also repeatedly returned to haul-out on nearby beaches (Orca Network 2020).

Harbor Seal

Harbor seals inhabit coastal and estuarine waters off Baja California, north along the western coasts of the continental U.S., British Columbia, and Southeast Alaska, west through the Gulf of Alaska and Aleutian Islands, and in the Bering Sea north to Cape Newenham and the Pribilof Islands (Carretta *et al.*, 2014). They haul out on rocks, reefs, beaches, and drifting glacial ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals generally are non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Scheffer and Slipp 1944; Fisher 1952; Bigg 1969, 1981). Within U.S. west coast waters, five stocks of harbor seals are recognized: (1) Southern Puget Sound (south of the Tacoma Narrows Bridge); (2) Washington Northern Inland Waters (including Puget Sound north of the Tacoma Narrows Bridge, the San Juan Islands, and the Strait of Juan de Fuca); (3) Hood Canal; (4) Oregon/Washington Coast; and (5) California. Harbor seals in the project areas would be from the Washington Northern Inland Waters stock.

Harbor seals are the only pinniped species that occurs year-round and breeds in Washington waters (Jeffries *et al.*, 2000). Pupping seasons vary by geographic region, with pups born in coastal estuaries (Columbia River, Willapa Bay, and Grays Harbor) from mid-April through June; Olympic Peninsula coast from May through July; San Juan Islands and eastern bays of Puget Sound from June through August; southern Puget Sound from mid-July through September; and Hood Canal from August through January (Jeffries *et al.*, 2000). The most recent estimate for the Washington Northern Inland Waters Stock is 11,036 based on surveys conducted in 1999. There are no current estimates of abundance for this stock but the population is thought to be stable (Carretta *et al.*, 2014).

There is one documented harbor seal haulout area near Bainbridge Island, approximately 6 miles west of Piers 58 and 63. The haulout, which is estimated at less than 100 animals, consists of intertidal rocks and reef areas around Blakely Rocks and is within the area of potential effects but at the outer extent near Bainbridge Island (Jeffries *et al.*, 2000). Harbor seals are a commonly

observed marine mammal in the area of potential effects and are known to be comfortable and seemingly curious around human activities. Observations of harbor seals were reported during many recent construction projects along the Seattle waterfront. During two seasons of construction at Pier 62, up to 54 harbor seals were observed per day, with an average of 5 individuals per day (Anchor QEA 2019).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately

assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have

been successfully completed for mysticetes (i.e., low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS [NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchids, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (i.e., all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinnipeds (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Twelve marine mammal species (8 cetacean and 4 pinniped (2 otariid and 2 phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 3. Of the cetacean species that may be present, 3 are classified as low-frequency cetaceans (i.e., all mysticete species), 3 are classified as mid-frequency cetaceans (i.e., all delphinid species), and 2 are classified as high-frequency cetaceans (i.e., all porpoise species).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a discussion of the ways that components of the specified activities may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative

analysis of the number of individuals that are expected to be taken by these activities. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Acoustic effects on marine mammals during the specified activities can occur from impact pile driving and vibratory driving and removal. The effects of underwater noise from the City's proposed activities have the potential to result in Level A or Level B harassment of marine mammals in the action areas.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (e.g., waves, wind,

precipitation, earthquakes, ice, atmospheric sound), biological (e.g., sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (e.g., vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a

distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact and vibratory pile driving and removal. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.*, explosions, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; NMFS, 2018). Non-impulsive sounds (*e.g.*, machinery operations such as drilling or dredging, vibratory pile driving, underwater chainsaws, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward 1997 in Southall *et al.*, 2007).

Two types of hammers would be used on this project, impact and vibratory. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is considered impulsive. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce non-impulsive, continuous sounds. Vibratory hammering generally produces SPLs 10 to 20 dB lower than impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

The likely or possible impacts of the City's proposed activities on marine mammals could be generated from both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment, vessels, and personnel; however, we expect that any animals that approach the project site(s) close enough to be harassed due to the presence of equipment or personnel would be within the Level B harassment zones from pile driving and would already be subject to harassment from the in-water activities. Therefore, any impacts to marine mammals are expected to

primarily be acoustic in nature. Acoustic stressors are generated by heavy equipment operation during pile installation and removal (*i.e.*, impact and vibratory pile driving and removal).

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving equipment is the primary means by which marine mammals may be harassed from the City's specified activities. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.*, 2007). Generally, exposure to pile driving and removal and other construction noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.*, avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and demolition noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.*, impulsive vs. non-impulsive), the species, age and sex class (*e.g.*, adult male vs. mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat. No physiological effects other than PTS are anticipated or proposed to be authorized, and therefore are not discussed further.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.*, impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS,

the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how animal uses sound within the frequency band of the signal; *e.g.*, Kastelein *et al.*, 2014), and the overlap between the animal and the source (*e.g.*, spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.*, 1958, 1959; Ward, 1960; Kryter *et al.*, 1966; Miller, 1974; Ahroon *et al.*, 1996; Henderson *et al.*, 2008). PTS levels for marine mammals are estimates, because there are limited empirical data measuring PTS in marine mammals (*e.g.*, Kastak *et al.*, 2008), largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.*, 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum} , the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum} , the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily

compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiakororientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2,760 strikes/hour) in captivity, mean TTS increased from 0 dB after 15 minute exposure to 5 dB after 360 minute exposure; recovery occurred within 60 minutes (Kastelein *et al.*, 2016). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. Nonetheless, what we considered is the best available science. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Installing piles for these projects requires impact pile driving. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located. Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.*, Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

In 2016, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.*, pile driving) at the Kodiak Ferry Dock (see 80 FR 60636, October 7, 2015). In the marine mammal monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the Level B disturbance zone during pile driving or drilling (*i.e.*, documented as Level B harassment take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 m of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in species, activities, and habitat (*e.g.*, cool-temperate waters, industrialized area), we expect similar behavioral responses from the same and similar species affected by the City's specified activities. That is, disturbance, if any, is likely to be temporary and localized (*e.g.*, small area movements).

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of

some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (e.g., Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (e.g., Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (e.g., Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was

associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as "distress." In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of these projects based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. The Seattle area contains active commercial shipping, ferry operations, and commercial fishing as well as numerous recreational and other commercial vessels, and background sound levels in the area are already elevated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans

are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. There are no haulouts near the project sites. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The City's construction activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). During impact and vibratory pile driving or removal, elevated levels of underwater noise would ensonify the project areas where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the

area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25-ft (7.6-m) radius around the pile (Everitt *et al.*, 1980). The sediments of the project site will settle out rapidly when disturbed. Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Local currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in Puget Sound. The area is highly influenced by anthropogenic activities. The total seafloor area affected by pile installation and removal is a small area compared to the vast foraging area available to marine mammals in the area. At best, the impact area provides marginal foraging habitat for marine mammals and fishes. Furthermore, pile driving and removal at the project site would not obstruct long-term movements or migration of marine mammals.

Avoidance by potential prey (*i.e.*, fish or, in the case of transient killer whales, other marine mammals) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

In-Water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.*, crustaceans, cephalopods, fish, zooplankton, other marine mammals). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey other than other marine mammals (which have been discussed earlier).

Fish utilize the soundscape and components of sound in their environment to perform important

functions such as foraging, predator avoidance, mating, and spawning (*e.g.*, Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.*, feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.*, Fewtrell and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.*, Pena *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009; Popper *et al.*, 2015).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most

likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012b; Casper *et al.*, 2013).

The most likely impact to fishes from pile driving and removal and construction activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish in the project areas. Forage fish form a significant prey base for many marine mammal species that occur in the project areas. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 ft (3 m) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish are expected to be minor or negligible. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in Elliott Bay are routinely exposed to substantial levels of suspended sediment from natural and anthropogenic sources.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed actions are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through these IHAs, which will inform both NMFS' consideration of "small numbers" and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines “harassment” as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment (in the form of behavioral disturbance and TTS), as use of the acoustic sources (*i.e.*, vibratory or impact pile driving and removal) have the potential to result in disruption of behavioral patterns and cause a temporary loss in hearing sensitivity for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result for porpoises and harbor seals because predicted auditory injury zones are larger. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for these activities. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensounded above these levels in a day; (3) the

density or occurrence of marine mammals within these ensounded areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.*, frequency, predictability, duty cycle), the environment (*e.g.*, bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to

underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μPa) (root mean square (rms)) for continuous sources (*e.g.*, vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. This take estimation includes disruption of behavioral patterns resulting directly in response to noise exposure (*e.g.*, avoidance), as well as that resulting indirectly from associated impacts such as TTS or masking.

The City’s proposed activities includes the use of continuous (vibratory hammer) and impulsive (impact hammer) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS’ Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The City’s activities include the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa , and cumulative sound exposure level (L_E) has a reference value of 1 $\mu\text{Pa}^2\text{s}$. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activities that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project areas is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected by sound generated by the primary components of the project (*i.e.*, impact and vibratory pile driving).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes, and methods for the two piers (Tables 6 and 7).

TABLE 6—PIER 58 PROJECT SOUND SOURCE LEVELS

Pile type and size (in)	Method	Source level (dB re 1 μPa)	Reference
14-in timber, steel H-piles	Vibratory removal	152 dB rms	Greenbusch Group (2018).
24-in steel pipe pile	Vibratory removal and installation	163 dB rms	Greenbusch Group (2019).
30-in steel pipe pile	Vibratory installation	163 dB rms	Greenbusch Group (2019).
30-in steel pipe pile	Impact installation	180 dB rms, ¹ 193 dB peak	Greenbusch Group (2019).

¹ Highest RMS sound level from bubble curtain attenuated impact driving of 30-in steel piles at Pier 62.

TABLE 7—PIER 63 PROJECT SOUND SOURCE LEVELS

Pile type and size (in)	Method	Source level (dB re 1 μPa)	Reference
14-in timber	Vibratory removal	152 dB rms	Greenbusch Group (2018).
30-in steel pipe pile	Vibratory removal	163 dB rms	Greenbusch Group (2019).

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \text{Log}_{10} (R1/R2)$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most

appropriate assumption for the City’s proposed activities in the absence of specific modelling. The Level B harassment zones for the City’s proposed activities are shown in Tables 8 and 9.

Level A Harassment Zones

The NMFS Technical Guidance (2018) recognizes that ensonified area/volume can be more technically challenging to predict because of the duration component in the new thresholds, and therefore includes a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D

modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile installation and removal, the NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance for the whole duration of the activity, it would incur PTS. The isopleths generated by the User Spreadsheet used the same TL coefficient as the Level B harassment zone calculations (*i.e.*, the practical spreading value of 15). Inputs used in the User Spreadsheet (*e.g.*, number of piles per day, duration and/or strikes per pile) are presented in Tables 1 and 2, and the resulting isopleths are reported below in Tables 8 and 9. The areas expected to be ensonified above the Level B harassment threshold(s) are also presented in Tables 8 and 9. Due to the bathymetry and geography of the project areas, sound will not reach the full distance of the harassment isopleths in all directions.

TABLE 8—PIER 58 LEVEL A HARASSMENT AND LEVEL B HARASSMENT ZONES

Pile type	Level A harassment zone (m)					Level B harassment zone (m)	Level B ensonified area (km ²)
	LF cetacean	MF cetacean	HF cetacean	Phocids	Otariids		
Timber and steel H-pile removal	6.1	0.5	9.0	3.7	0.3	^b 1,359	2.35
24-in steel vibratory install and removal, 30-in steel vibratory install ^a	19.3	1.7	28.6	11.7	0.8	^b 7,357	34.34

TABLE 8—PIER 58 LEVEL A HARASSMENT AND LEVEL B HARASSMENT ZONES—Continued

Pile type	Level A harassment zone (m)					Level B harassment zone (m)	Level B ensonified area (km ²)
	LF cetacean	MF cetacean	HF cetacean	Phocids	Otariids		
30-in steel impact install	153.3	5.5	182.6	82.0	6.0	^c 215	0.07

^a Level A harassment zones for vibratory installation and removal of steel piles calculated using the highest total duration of driving (installation of 30-inch piles) and conservatively applied to all vibratory pile driving.

^b Distance to 120 dB rms threshold.

^c Distance to 160 dB rms threshold.

TABLE 9—PIER 63 LEVEL A HARASSMENT AND LEVEL B HARASSMENT ZONES

Pile type	Level A harassment zone (m)					Level B harassment zone (m) ^a	Level B ensonified area (km ²)
	LF cetacean	MF cetacean	HF cetacean	Phocids	Otariids		
Timber	6.1	0.5	9.0	3.7	0.3	1,359	2.35
Steel	19.3	1.7	28.6	11.7	0.8	7,357	34.34

^a Distance to 120 dB rms threshold.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the proposed take incidental to the City’s pile driving activities. Unless otherwise specified, the term “pile driving” in this section, and all following sections, may refer to either pile installation or removal. The City considered estimating take using the ensonified area and density estimates from the U.S. Navy’s Marine Species Density Database for the Northwest Training and Testing Study Area (U.S. Navy, 2019) but did not consider the resulting take estimates to be realistic (*i.e.*, either over- or underestimated take). Instead, the City compiled monitoring results from recent construction projects in Elliott Bay (*e.g.*, WSDOT, 2019; Anchor QEA, 2021) to estimate the likely daily or monthly occurrence of each species in the project areas. Unless otherwise specified, the occurrence information described below is used to estimate take for both the Pier 58 and Pier 63 projects. NMFS has carefully reviewed the City’s analysis and concludes that it represents an appropriate and accurate method for estimating incidental take caused by the City’s activities.

Humpback Whale

During previous work for the Pier 62 Project and the Elliott Bay Seawall Project, up to two humpback whales were observed during the approximately one month of work each year for both projects (Anchor QEA 2014, 2015, 2016, 2017, 2018 and 2019). Therefore, the City assumes that two humpback whales may be present in the project areas and

taken by Level B harassment per month. The City anticipates up to 6 months of activities at Pier 58 and 3 months at Pier 63, for a total of 12 takes of humpback whales by Level B harassment from Pier 58 reconstruction and 6 takes by Level B harassment from Pier 63 removal.

Since the City would be required to comply with all mitigation and monitoring measures, including marine mammal monitoring and coordination with Orca Network (see Proposed Mitigation), these measures would likely be successful in detecting humpback whales given their size and visibility, the City would stop work before humpback whales could enter the small Level A harassment zones (up to 153.3 m), and humpback whales are infrequent visitors to the project areas, it is unlikely that any humpback whales would be taken by Level A harassment. No take of humpback whales by Level A harassment is requested or proposed to be authorized.

Gray Whale

Gray whales are infrequent visitors to the project areas but are most commonly seen during the winter months. Although no observations of gray whales have been reported during recent pile driving projects along the Seattle waterfront (*e.g.*, WSDOT 2021; Anchor QEA 2019), individual gray whales have been reported in Elliott Bay by WSDOT ferry operators in December 2018, January 2019, and November 2019. Therefore, the City estimates that one gray whale may be taken by Level B harassment in each winter month (November, December, January, and February) of the work window. Therefore, the City has requested 4 takes of gray whales by Level B harassment

from Pier 58 reconstruction. Since Pier 63 removal is expected to take only 3 months total, the City has requested 3 takes of gray whales by Level B harassment from Pier 63 removal.

Since the City would be required to comply with all mitigation and monitoring measures, including marine mammal monitoring and coordination with Orca Network, these measures would likely be successful in detecting gray whales given their size and visibility, the City would stop work before gray whales could enter the small Level A harassment zones (up to 153.3 m), and gray whales are infrequent visitors to the project areas, it is unlikely that any gray whales would be taken by Level A harassment. No take of gray whales by Level A harassment is requested or proposed to be authorized.

Minke Whale

Minke whales are rarely observed in the project areas and none have been reported during monitoring for recent pile driving activities in the area (*e.g.*, WSDOT 2021; Anchor QEA 2019). The City estimates that no more than one minke whale per month may be taken by Level B harassment. Therefore, the City has requested 6 takes of minke whales by Level B harassment from Pier 58 reconstruction and 3 takes by Level B harassment from Pier 63 removal.

Like humpback and gray whales, minke whales are considered infrequent visitors to the project areas. As with humpback and gray whales, the City would be required to coordinate with Orca Network and would likely be alerted to the presence of minke whales in the area, allowing them to shut down pile driving equipment before a minke whale could enter the Level A

harassment zones. Hence, in consideration of the expected effectiveness of mitigation and infrequent occurrence, no take of minke whales by Level A harassment is requested or proposed to be authorized.

Transient Killer Whale

Transient killer whales are frequently seen in central Puget Sound and occasionally within Elliott Bay (Orca Network 2021). Transient killer whales typically travel in small groups. The City estimates that a group of 6 transient killer whales may enter the Level B harassment zone per month. Therefore, the City has requested take of 36 transient killer whales by Level B harassment from Pier 58 reconstruction and 18 takes by Level B harassment from Pier 63 removal.

The Level A harassment zones for mid-frequency cetaceans are all less than 10 m. The City would be required to coordinate with Orca Network and would likely be alerted to the presence of transient killer whales in the area, allowing them to detect the animals and cease pile driving well before killer whales could enter the Level A harassment zone. No take of transient killer whales by Level A harassment is requested or proposed to be authorized.

Southern Resident Killer Whale

Although SRKW are generally infrequently observed in Puget Sound, they are known to venture past the project areas during the fall and winter months as they hunt fall runs of salmon (Hanson *et al.*, 2021). Of the three pods within the SRKW population, J pod (which is comprised of 23 individuals; Orca Network, 2020) is the most likely to occur in the area.

The City would coordinate with the Orca Network to obtain sightings reports of SRKW near the project areas and shut down pile driving equipment before any SRKW enters the Level B harassment zone to avoid take of this stock. Given the relatively large size and visibility of SRKW, and the use of marine mammal sightings network reports (*i.e.*, Orca Network) for advanced notice of SRKW presence in Puget Sound, these mitigation measures would likely be successful in preventing any Level B harassment. However, the City acknowledges that due to the large Level B harassment zone during vibratory installation and removal of steel piles at Pier 58 (approximately 7.4 km), over the course of 40 days of construction activities, it is possible that one pod of SRKW could enter the area undetected. That pod would most likely be J pod because it is the pod most likely to be near the project areas. In an abundance

of caution, the City has requested take of 23 SRKW by Level B harassment from pile driving at Pier 58 in the event a pod were able to enter the Level B harassment zone prior to detection and shutdown.

During vibratory removal of timber piles at Pier 63, the Level B harassment zone is less than 1.4 km, which is well within Elliott Bay. SRKW are unlikely to enter the Level B harassment zone during this activity and even if they did, would be readily detected and pile removal activities shut down. The Level B harassment zone for vibratory removal of steel piles at Pier 63 is approximately 7.4 km, which reaches the outer extent of Elliott Bay and into the central core Puget Sound between Seattle and Bainbridge Island where SRKW may occur. However, removal of steel piles at Pier 63 is only expected to occur on 2 days, and given the mitigation measures that would be in place and the relatively large size and visibility of SRKW, the City considers it unlikely that SRKW would enter the Level B harassment zone undetected and be exposed to sound above the Level B harassment threshold before the City could cease pile driving activities. We concur with the City's conclusion.

The Level A harassment zones for all activities for both Pier 58 reconstruction and Pier 63 removal are less than 10 m for mid-frequency cetaceans. Given the size and visibility of killer whales, the City would be able to implement the proposed mitigation and monitoring measures and shut down pile driving equipment well before SRKW could approach within 10 m. Therefore no take of SRKW by Level A harassment is expected to occur, and no Level A harassment is requested or proposed to be authorized.

Bottlenose Dolphin

In 2017 the Orca Network (2017) reported sightings of a bottlenose dolphin in Puget Sound and in Elliott Bay, and WSDOT observed two bottlenose dolphins in one week during monitoring for the Colman Dock Multimodal Project (WSDOT 2018). In addition, a group of 7 bottlenose dolphins were observed in 2017 and were positively identified as part of the California coastal stock (Cascadia Research Collective, 2017). Bottlenose dolphins typically travel in groups of 2 to 15 in coastal waters (Carretta *et al.*, 2020). The City estimates that 7 bottlenose dolphins may be taken by Level B harassment per month. Therefore, the City has requested take of 42 bottlenose dolphins by Level B harassment from Pier 58 reconstruction

and 21 takes by Level B harassment from Pier 63 removal.

The Level A harassment zones for mid-frequency cetaceans are all less than 10 m. Given the visibility of bottlenose dolphins, the City would be able to cease pile driving before bottlenose dolphins could enter the Level A harassment zone. No take of bottlenose dolphins by Level A harassment is requested or proposed to be authorized.

Long-Beaked Common Dolphin

In June 2011, two long-beaked common dolphins were sighted in South Puget Sound. Sightings continued in 2012, and in 2016–17 (Carretta *et al.*, 2018). Sightings of 4 to 12 individuals were reported regularly, with confirmed sightings of up to 30 individuals. In 2016, the Orca Network (2016) reported a pod of up to 20 long-beaked common dolphins. During monitoring for the Colman Dock Project in 2017–2018, 2 long-beaked common dolphins were observed in smaller Level B harassment zones than estimated for pile driving at Piers 58 and 63. The average reported group size of long-beaked common dolphins in Puget Sound is 7 individuals. Therefore, the City estimates 7 long-beaked common dolphins may be taken by Level B harassment per month and has requested take of 42 long-beaked common dolphins by Level B harassment from Pier 58 reconstruction and 21 takes by Level B harassment from Pier 63 removal.

The Level A harassment zones for mid-frequency cetaceans are all less than 10 m. Given the visibility of long-beaked common dolphins, the City would be able to cease pile driving before long-beaked common dolphins could enter the Level A harassment zone. No take of long-beaked common dolphins by Level A harassment is requested or proposed to be authorized.

Harbor Porpoise

Recent monitoring data from the Colman Dock Project (Pier 52) in 2017 and 2018 (WSDOT 2019) included observations of 288 harbor porpoises over 99 days of monitoring activity. This equates to approximately 3 porpoises per day.

To account for unobserved animals at the outer extent of the Level B harassment zones, the City estimates up to 6 harbor porpoises may enter the Level B harassment zone per day of pile driving at Pier 58 (70 days) for a total of 420 harbor porpoises. For impact installation of steel piles at Pier 58, the Level A harassment zone for high-frequency cetaceans is 183 m. Although

the City would be required to implement a shutdown zone of 185 m during this activity (see Proposed Mitigation), due to the cryptic nature and lower detectability of harbor porpoises at large distances, the City anticipates that up to 12 of the harbor porpoises (2 per month) that enter the Level B zone could approach the project site closer and potentially enter the Level A harassment zone undetected during impact installation at Pier 58, which could occur as one group in one day or single animals over two days. The Level A harassment zones for all vibratory pile driving at Pier 58 are all under 30 m. At that distance, the City would be able to detect harbor porpoises and cease pile driving activities before harbor porpoises could enter the Level A harassment zone. Therefore, no take of harbor porpoises by Level A harassment is anticipated from vibratory pile driving. In total, the City has requested take of 420 harbor porpoises, 408 takes by Level B harassment and 12 takes by Level A harassment from Pier 58 reconstruction.

On all but two days of work at Pier 63, the Level B harassment zone will be well within Elliott Bay. Since the extent of the Level B harassment zone for this project on most days is less than for Pier 58, the City estimates that up to 5 harbor porpoises may be taken by Level B harassment per day during 47 days of pile removal at Pier 63, for a total of 235 takes by Level B harassment. The largest Level A harassment zone from pile removal at Pier 63 is 29 m. At that close range, the City would be able to detect harbor porpoises and would be required to shut down pile driving activities before they approach within 29 m. Therefore, no take of harbor porpoises by Level A harassment from pile driving at Pier 63 is requested or proposed to be authorized.

Dall's Porpoise

Dall's porpoises are rarely sighted in the project areas. The City conservatively estimates that up to 12 Dall's porpoises may enter the Level B harassment zone per month, for a total of 72 Dall's porpoises from Pier 58 reconstruction and 36 from Pier 63 removal.

For impact installation of steel piles at Pier 58, the Level A harassment zone for high-frequency cetaceans is 183 m. Although the City would be required to comply with all mitigation and monitoring measures and would implement a shutdown zone of 185 m during this activity, the City anticipates that up to 12 of the Dall's porpoises (2 per month) that enter the Level B harassment zone could approach the

project site closer and potentially enter the Level A harassment zone undetected during impact installation at Pier 58, which could occur as one group in one day or a single animal over two days. The Level A harassment zones for all vibratory pile driving at Pier 58 are all under 30 m. At that distance, the City would be able to detect Dall's porpoises and cease pile driving activities before Dall's porpoises could enter the Level A harassment zone. Therefore, no take of Dall's porpoises by Level A harassment is anticipated from vibratory pile driving. In total, the City has requested take of 72 Dall's porpoise, 60 takes by Level B harassment and 12 takes by Level A harassment from Pier 58 reconstruction.

The largest Level A harassment zone from pile removal at Pier 63 is 29 m. At that close range, the City would be able to detect Dall's porpoises and would be required to shut down pile driving activities before they approach within 29 m. Therefore, no take of Dall's porpoises by Level A harassment from pile driving at Pier 63 is requested or proposed to be authorized. The City has requested 36 takes of Dall's porpoise by Level B harassment only for activities at Pier 63.

California Sea Lion

During monitoring for the Pier 62 Project, a maximum of 31 California sea lions were observed in one day, with an average of 6 takes per day (Anchor QEA 2019). To account for unobserved animals at the outer extent of the Level B harassment zones, the City estimates up to 10 California sea lions may be taken by Level B harassment per day for a total of 700 takes by Level B harassment from Pier 58 reconstruction and 470 takes by Level B harassment from Pier 63 removal.

The largest Level A harassment zone for otariid pinnipeds is 6 m. The City would be required to implement a minimum shutdown zone of 10 m for all activities. At that close range, the City would be able to detect California sea lions and implement the required shutdown measures before California sea lions could enter the Level A harassment zone. Therefore, no takes of California sea lions by Level A harassment are requested or proposed to be authorized.

Steller Sea Lion

Recent monitoring data from the Colman Dock Project in 2017 and 2018 (WSDOT 2019) reported observations of 54 Steller sea lions over 99 days of monitoring activity, which is roughly equivalent to one Steller sea lion every other day. To account for unobserved

animals at the outer extent of the Level B harassment zones, the City estimates two Steller sea lions may be taken by Level B harassment per day for a total of 140 takes by Level B harassment from Pier 58 reconstruction and 94 takes by Level B harassment from Pier 63 removal.

The largest Level A harassment zone for otariid pinnipeds is 6 m. The City would be required to enforce a minimum shutdown zone of 10 m for all activities. At that close range, the City would be able to detect Steller sea lions and implement the required shutdown measures before Steller sea lions could enter the Level A harassment zone. Therefore, no takes of Steller sea lions by Level A harassment are requested or proposed to be authorized.

Northern Elephant Seal

Individual elephant seals have occasionally been reported in central Puget Sound (*e.g.*, Orca Network, 2020) but are considered rare in the project areas. WSDOT (2019) reported observations near Alki Point (at the outer extent of the Level B harassment zones) and Maury Island (just outside the Level B harassment zones) in 2017 and 2015, respectively. Based on these reports, the City estimates that one northern elephant seal may be taken by Level B harassment per month for a total of 6 takes by Level B harassment from Pier 58 reconstruction and 3 takes by Level B harassment from Pier 63 removal.

The largest Level A harassment zone (82 m) occurs during impact installation of steel pipe piles at Pier 58. It is unlikely that northern elephant seals would be found within this zone, and even more unlikely that northern elephant seals would be found within the Level A harassment zones for vibratory pile driving at either pier (less than 12 m for all pile types). However, even if northern elephant seals were encountered in the project areas, at that close range, the City would be able to detect them and implement the required shutdown measures before any northern elephant seals could enter the Level A harassment zones. Therefore, no take of northern elephant seals by Level A harassment is requested or proposed to be authorized.

Harbor Seal

During monitoring for the Pier 62 Project, the maximum number of harbor seals documented as taken by Level B harassment in one day was 54, but the average number documented per day was 5 (Anchor QEA 2019). To account for potentially unobserved animals at the outer extent of the Level B

harassment zone during the previous monitoring, the City estimates that 10 harbor seals per day may enter the Level B harassment zone during pile driving work at Pier 58 for a total of 700 harbor seals. In addition, due to their apparent curious nature and previously reported close approaches to pile driving equipment (Anchor QEA 2019), the City estimates that of those 700 harbor seals that could enter the Level B harassment zone, one harbor seal may approach closer and enter the 82-m Level A harassment zone before the animal is detected and activities shut down, and thus be taken by Level A harassment on each day of impact pile installation at Pier 58 (40 days). The Level A harassment zones for phocids for all vibratory pile driving at Pier 58 are all under 12 m. At that distance, the City would be able to detect harbor seals and

cease pile driving activities before harbor seals could enter the Level A harassment zone. Therefore, no take of harbor seals by Level A harassment is anticipated from vibratory pile driving at Pier 58. In total, the City has requested 700 takes of harbor seals, 660 takes by Level B harassment and 40 takes by Level A harassment from Pier 58 reconstruction.

On all but two days of work at Pier 63, the Level B harassment zone will be well within Elliott Bay. Since the extent of the Level B harassment zone for this project on most days is less than for Pier 58, the City estimates that up to 6 harbor seals may be taken by Level B harassment per day during the 47 days of pile removal at Pier 63 for a total of 282 takes by Level B harassment.

The largest Level A harassment zone for the City's proposed activities at Pier

63 is 12 m. The City would be required to implement a 15 m shutdown zone to prevent Level A take of phocids for this project (see Proposed Mitigation). At that close range, the City would be able to detect harbor seals and cease pile driving activities before harbor seals could enter the Level A harassment zone. Therefore, no take of harbor seals by Level A harassment is requested or proposed to be authorized for work at Pier 63.

NMFS has carefully considered all information and analysis presented by the City as well as all other applicable information and, based on the best available science, concurs that the City's estimates of the types and amounts of take for each species and stock are complete and accurate.

TABLE 10—PROPOSED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT FROM PIER 58 RECONSTRUCTION, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Stock	Proposed take by Level B harassment	Proposed take by Level A harassment	Stock abundance	Percent of stock
Humpback whale	California/Oregon/Washington	^a 12	0	4,973	0.24
Gray whale	Eastern North Pacific	4	0	26,960	0.01
Minke whale	California/Oregon/Washington	6	0	915	0.66
Killer whale	West Coast Transient	36	0	349	10.32
Killer whale	Southern Resident	23	0	72	31.94
Bottlenose dolphin	California Coastal	42	0	453	9.27
Long-beaked common dolphin	California	42	0	83,379	0.05
Harbor porpoise	Washington Inland Waters	408	12	11,233	3.74
Dall's porpoise	California/Oregon/Washington	60	12	16,498	0.44
California sea lion	U.S	700	0	257,606	0.27
Steller sea lion	Eastern	140	0	43,201	0.32
Northern elephant seal	California Breeding	6	0	187,386	0.003
Harbor seal	Washington Northern Inland Waters	660	40	11,036	6.34

^a Based on proportional estimates of humpback DPS occurrence in the area from Wade *et al.* (2021), we estimate that of the 12 total takes, 25 percent (approximately 3) would be from the threatened Mexico DPS and 6 percent (approximately 1) from the endangered Central America DPS. The remaining 69 percent of humpback whales (approximately 8) would be from the unlisted Hawai'i DPS.

TABLE 11—PROPOSED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT FROM PIER 63 REMOVAL, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Stock	Proposed take by Level B harassment	Proposed take by Level A harassment	Stock abundance	Percent of stock
Humpback whale	California/Oregon/Washington	^a 6	0	4,973	0.12
Gray whale	Eastern North Pacific	3	0	26,960	0.01
Minke whale	California/Oregon/Washington	3	0	915	0.33
Killer whale	West Coast Transient	18	0	349	5.16
Killer whale	Southern Resident	0	0	72	0
Bottlenose dolphin	California Coastal	21	0	453	4.64
Long-beaked common dolphin	California	21	0	83,379	0.02
Harbor porpoise	Washington Inland Waters	235	0	11,233	2.1
Dall's porpoise	California/Oregon/Washington	36	0	16,498	0.22
California sea lion	U.S	470	0	257,606	0.18
Steller sea lion	Eastern	94	0	43,201	0.22
Northern elephant seal	California Breeding	3	0	187,386	0.002
Harbor seal	Washington Northern Inland Waters	282	0	11,036	2.56

^a Based on proportional estimates of humpback DPS occurrence in the area from Wade *et al.* (2021), we estimate that of the 6 total takes, 25 percent (approximately 1) would be from the Mexico DPS and 6 percent (approximately 1) from the Central America DPS. The remaining 69 percent of humpback whales (approximately 4) would be from the unlisted Hawai'i DPS.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for these actions). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if

implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Time Restrictions

The City has provided in its description of the projects that pile driving would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction would be limited to the period between September 1 and February 15.

Shutdown Zones

Before the commencement of in-water construction activities, the City would establish shutdown zones for all activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Pile driving would also not commence until all marine mammals are clear of their respective shutdown zones. Shutdown zones are meant to encompass the Level A harassment zones and therefore would vary based on the activity type and marine mammal hearing group (Tables 12 and 13). At minimum, the shutdown zone for all hearing groups

and all activities is 10 m. For in-water heavy machinery work other than pile driving (e.g., standard barges, etc.), if a marine mammal comes within 10 m, operations would cease and vessels would reduce speed to the minimum level required to maintain steering and safe working conditions. This type of work could include, for example, the movement of the barge to the pile location or positioning of the pile on the substrate via a crane.

The City would also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity (see Tables 12 and 13).

The City would also implement shutdown measures for SRKW. If SRKW are sighted within the vicinity of the project areas and are approaching the Level B harassment zone, the City would shut down the pile driving equipment to avoid possible take of the stock. If a killer whale approaches the Level B harassment zone during pile driving, and it is unknown whether it is a SRKW or a transient killer whale, it would be assumed to be a SRKW and the City would implement the shutdown measure. If a SRKW or an unidentified killer whale enters the Level B harassment zone undetected, in-water pile driving would be suspended until the whale exits the Level B harassment zone, or 15 minutes have elapsed with no sighting of the animal, to avoid further Level B harassment.

TABLE 12—SHUTDOWN ZONES FOR PIER 58 RECONSTRUCTION

Pile type and method	Shutdown zone (m)					
	LF cetacean	MF cetacean	HF cetacean	Phocids	Otariids	SRKW (and other unauthorized species)
Timber and steel H-pile vibratory removal	10	10	10	10	10	1,359
24-in steel vibratory installation and removal, 30-in steel vibratory installation	20	10	30	15	10	7,357
30-in steel impact installation	155	10	185	85	10	215

TABLE 13—SHUTDOWN ZONES FOR PIER 63 REMOVAL

Pile type	Shutdown zone (m)					
	LF cetacean	MF cetacean	HF cetacean	Phocids	Otariids	SRKW (and other unauthorized species)
Timber pile vibratory removal	10	10	10	10	10	1,359
Steel pile vibratory removal	20	10	30	15	10	7,357

Protected Species Observers

The placement of protected species observers (PSOs) during all pile driving activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.*, fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Monitoring for Level A and Level B Harassment

PSOs would monitor the Level B harassment zones to the extent practicable, and all of the Level A harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in Tables 12 and 13, pile driving activity would be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity would not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or 15 minutes have passed without re-detection of the animal. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities would begin and Level B harassment take would be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.*, the entire shutdown zone and surrounding waters must be visible to the naked eye).

Coordination With Local Marine Mammal Research Network

Prior to the start of pile driving for the day, and at the approximate mid-point of the pile driving work to be conducted each day, the PSOs would contact the Orca Network to find out the location of the nearest marine mammal sightings. The Local Marine Mammal Research Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the United States and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

Soft Start

Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Bubble Curtain

A bubble curtain would be employed during impact installation or proofing of steel piles. A noise attenuation device would not be required during vibratory

pile driving. If a bubble curtain or similar measure is used, it would distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure would be required to provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring would be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring would ensure 100 percent mudline contact. No parts of the ring or other objects would prevent full mudline contact.

Based on our evaluation of the City's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance for the Pier 58 Reconstruction Project. NMFS also preliminarily finds that the proposed mitigation measures and other measures considered by NMFS provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance for the Pier 63 Removal Project.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential

stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas).

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring during pile driving activities would be conducted by PSOs meeting NMFS' standards and in a manner consistent with the following:

- Independent PSOs (*i.e.*, not construction personnel) who have no other assigned tasks during monitoring periods would be used;

- At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would be required to have prior experience working as a marine mammal observer during construction.

PSOs would have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;

- Experience or training in the field identification of marine mammals, including the identification of behaviors;

- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The City would have PSOs stationed around Elliott Bay to monitor during all pile driving activities. During removal of timber and/or steel H-piles at Pier 58 and Pier 63, two PSOs would monitor the area, one at the construction site and one at Alki Point on the south side of Elliott Bay. During vibratory removal and/or installation of steel piles at Pier 58 and Pier 63, PSOs would be stationed at the same locations as above, with an additional PSO monitoring from Magnolia on the north side of Elliott Bay and one PSO monitoring from the Seattle-Bainbridge ferry. Impact installation of 30-inch permanent steel piles at Pier 58 is expected to occur on the same day as vibratory installation of those piles. If all vibratory installation has concluded for the day, only the PSO stationed at the construction site would be required to continue monitoring during impact pile driving.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, observers would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report would include:

- Dates and times (begin and end) of all marine mammal monitoring;

- Construction activities occurring during each daily observation period, including: (a) How many and what type of piles were driven or removed and the method (*i.e.*, impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) number of strikes for each pile (impact driving);

- PSO locations during marine mammal monitoring; and

- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

For each observation of a marine mammal, the following would be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;

- Time of sighting;

- Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

- Distance and location of each observed marine mammal relative to the pile being driven or hole being drilled for each sighting;

- Estimated number of animals (min/max/best estimate);

- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);

- Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones, by species; and

- Detailed information about implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft reports would constitute the final reports. If comments are received, a final report addressing NMFS' comments would be required to be submitted within 30 days after receipt of comments. All PSO datasheets and/or raw sighting data would be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the City would report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast Region (WCR) regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the City would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. The City would not resume their activities until notified by NMFS.

The report would include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing

regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving activities from Pier 58 reconstruction and Pier 63 removal have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment, from underwater sounds generated from pile driving. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No serious injury or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

To avoid repetition, the majority of our analyses apply to all the species listed in Table 3, and to both the Pier 58 and Pier 63 IHAs, given that the anticipated effects of the City’s two projects on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks—as is the case of the SRKW—they are included as separate subsections below. Similarly, where there are differences between the two IHAs, they are highlighted below.

NMFS has identified key factors which may be employed to assess the level of analysis necessary to conclude whether potential impacts associated with a specified activity should be considered negligible. These include (but are not limited to) the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect to the species or stock, and the status of the species or stock. The following factors support negligible impact determinations for the affected stocks of humpback whales, gray whales, transient killer whales, bottlenose dolphins, long-beaked common dolphins, harbor porpoise, Dall’s porpoise, California sea lions, Steller sea lions, northern elephant seals, and

harbor seals. Some of these factors may also apply to SRKW; however, a more detailed analysis for SRKW is provided below.

No take by Level A harassment is anticipated or proposed to be authorized incidental to the Pier 63 Removal Project. For the Pier 58 Reconstruction Project, take by Level A harassment is proposed for three species (harbor seals, harbor porpoise, and Dall’s porpoise) to account for the possibility that an animal could enter a Level A harassment zone prior to detection, and remain within that zone for a duration long enough to incur PTS before being observed and the City shutting down pile driving activity. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS, *i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving (*i.e.* the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Additionally, the amount of authorized take, by Level A harassment is very low for all marine mammal stocks and species. For the Pier 58 Reconstruction Project, for 10 of 13 stocks, NMFS anticipates and proposes to authorize no Level A harassment take over the duration of the City’s planned activities; for the other three stocks, NMFS authorizes no more than 40 takes by Level A harassment. If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. These takes of individuals by Level A harassment (*i.e.*, a small degree of PTS) are not expected to accrue in a manner that would affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

As described above, NMFS expects that marine mammals would likely move away from an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start. The City would also shut down pile driving activities if marine mammals approach within hearing group-specific zones that encompass the Level A harassment zones (see Tables 12 and 13) further minimizing the likelihood and degree of PTS that would be incurred. Even absent mitigation, no serious injury or mortality from

construction activities is anticipated or authorized.

Effects on individuals that are taken by Level B harassment in the form of behavioral disruption, on the basis of reports in the literature as well as monitoring from other similar activities, would likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff 2006). Most likely, individuals would simply move away from the sound source and temporarily avoid the area where pile driving is occurring. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activities are occurring, particularly as the project is located on a busy waterfront with high amounts of vessel traffic. We expect that any avoidance of the project areas by marine mammals would be temporary in nature and that any marine mammals that avoid the project areas during construction would not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

The projects are also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that

may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Aside from the SRKW critical habitat and BIA for gray whales described below, there are no known important areas for other marine mammals, such as feeding or pupping areas.

For all species and stocks, and both project areas (Pier 58 and 63), take would occur within a limited, relatively confined area (Elliott Bay within central Puget Sound) of the stock's range. Given the availability of suitable habitat nearby, any displacement of marine mammals from the project areas is not expected to affect marine mammals' fitness, survival, and reproduction due to the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals in Puget Sound. Level A harassment and Level B harassment would be reduced to the level of least practicable adverse impact to the marine mammal species or stocks and their habitat through use of mitigation measures described herein. Some individual marine mammals in the project areas may be present and be subject to repeated exposure to sound from pile driving on multiple days. However, these individuals would likely return to normal behavior during gaps in pile driving activity. Therefore, any behavioral effects of repeated or long duration exposures are not expected to negatively affect survival or reproductive success of any individuals. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any effects on rates of reproduction and survival of the stock.

Southern Resident Killer Whales

No takes of any sort are proposed to be authorized or anticipated for SRKW at the Pier 63 project. For the Pier 58 project, no permanent hearing impairment (PTS), or any other Level A harassment, is anticipated or proposed to be authorized; authorized takes of SRKW at Pier 58 would be limited to Level B harassment in the form of behavioral disturbance.

SRKW may be exposed to sound above the Level B harassment threshold during the Pier 58 reconstruction project. Although the City would be required to shut down any pile driving equipment before SRKW approach the Level B harassment zone, there is some potential that one or more SRKW could enter the area undetected and be taken before the City is able to shut down. If

that were to occur, it is likely that the whales would be detected at the outer edges of the Level B harassment zone, which would lessen the degree of sound than would be experienced if they were to approach closer to the project site. Therefore, if SRKW were exposed to sound above the Level B harassment threshold, it would generally be of a lower level and very short duration (only the time to detect the animals and shut down), which is expected to lessen the degree and duration of potential disturbance.

SRKW could be foraging while traveling past the Pier 58 reconstruction area and cease foraging effort in response to sound from the project if they entered the Level B harassment zone undetected, as discussed above. Most studies on the effects of disturbance on SRKW foraging have focused on impacts of whale watch vessels operating in close proximity to SRKW, and commercial shipping traffic in the Salish Sea. Exposure to vessel noise and presence of whale watching boats can significantly affect the foraging behavior of SRKW (Williams *et al.*, 2006; Lusseau *et al.*, 2009; Giles and Cendak 2010; Senigaglia *et al.*, 2016). Nutritional stress has also been identified as a primary cause of SRKW decline (Ayres *et al.*, 2012; Wasser *et al.*, 2017), suggesting that reduced foraging effort may have a greater impact than behavioral disturbance alone. However, given the typical frequency of killer whale foraging echolocation clicks (18 to 32 kHz), Lacy *et al.* (2017) note that high-frequency noise from small, outboard motors on many commercial whale watching and private vessels likely causes a greater reduction in killer whale foraging success than low-frequency (<1 kHz) noise from commercial shipping or pile driving (<2 kHz). While SRKW may experience elevated sound levels of lower frequencies from the City's proposed projects if they were to enter the Level B harassment zone during pile driving activities, the relatively small amount of time of altered behavior and minimal overlap of the predominant frequencies of pile driving and echolocation would not likely affect their overall foraging ability. Short-term impacts to foraging ability are not likely to have any effect on reproduction or survival of the individual SRKW, let alone effects on rates of recruitment or survival for the population as a whole (see Ayres *et al.*, 2012). Given the extensive monitoring and mitigation measures for all marine mammals and SRKW in particular, it is unlikely that individual whales would be exposed on multiple occasions.

ESA critical habitat for SRKW has been designated in Puget Sound, including the project areas (71 FR 69054; November 29, 2006). Critical habitat features were identified in consideration of physical and biological features essential to conservation of SRKW (essential features): (1) Water quality to support growth and development; (2) Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and (3) Passage conditions to allow for migration, resting, and foraging. NMFS did not identify in-water sound levels as a separate essential feature of critical habitat, though anthropogenic sound is recognized as one of the primary threats to SRKW (NMFS 2019). The exposure of SRKW to sound from the proposed activities would be minimized by the required proposed mitigation measures (e.g., shutdown zones equivalent to the Level B harassment zones). The effects of the activities on SRKW habitat generally, such as sedimentation and impacts to availability of prey species, are expected to be limited both spatially and temporally, constrained to the immediate area around the pile driver(s) at each pier and returning to baseline levels quickly. Additionally, the timing of the in-water work window for the projects is intended to limit impacts to juvenile salmonids, which would accordingly reduce potential impacts to SRKW prey. We therefore conclude that the proposed activities would have a negligible impact on SRKW.

Gray Whales

Puget Sound is part of a BIA for migrating gray whales (Calambokidis *et al.*, 2015). While Elliott Bay is included in the BIA, gray whales typically remain further north in Puget Sound, primarily in the waters around Whidbey Island (Calambokidis *et al.*, 2018). Gray whales are rarely observed in Elliott Bay. Therefore, even though the project areas overlap with the BIA, the infrequent occurrence of gray whales suggests that the proposed projects would have minimal, if any, impact on the migration of gray whales in the BIA, and would therefore not affect reproduction or survival.

There is an ongoing UME for gray whales (see the Description of Marine Mammals in the Area of Specified Activities section of this notice). However, we do not expect the takes estimated to occur and proposed for authorization to exacerbate or compound upon these ongoing UMEs. As noted previously, no Level A harassment, serious injury, or mortality

is expected or proposed for authorization, and any Level B harassment takes of gray whales would most likely be in the form of behavioral disturbance. The project areas have not been identified as important for feeding or mating gray whales, and therefore the projects are unlikely to disrupt any critical behaviors or have any effect on the reproduction or survival of gray whales, even in light of the ongoing UME.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from these activities are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or proposed to be authorized for either project;
- No take of any species by Level A harassment is anticipated or proposed to be authorized for the Pier 63 Removal Project;
- For the Pier 58 Reconstruction Project, Level A harassment is not anticipated or proposed to be authorized for 10 of the 13 species. For the other three species, the amount of Level A harassment is low and would be in the form of a slight degree of PTS;
- For both projects, Level B harassment would be in the form of behavioral disturbance, primarily resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, and some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprint of the activities;
- Nearby areas of similar habitat value within Puget Sound are available for marine mammals that may temporarily vacate the project areas during construction activities for both projects;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations from either project;
- The number of anticipated takes by Level B harassment is relatively low for all stocks for both projects;
- The ensounded areas from both projects are very small relative to the overall habitat ranges of all species and stocks, and will not adversely affect ESA-designated critical habitat, or cause more than minor impacts in any BIAS

or any other areas of known biological importance;

- The lack of anticipated significant or long-term negative effects to marine mammal habitat from either project;
- The efficacy of the mitigation measures in reducing the effects of the specified activities on all species and stocks for both projects;
- The enhanced mitigation measures (e.g., shutdown zones equivalent to the Level B harassment zones) to eliminate (for the Pier 63 Removal Project) and reduce (for the Pier 58 Reconstruction Project) the potential for any take of SRKW; and

- Monitoring reports from similar work in Puget Sound that have documented little to no effect on individuals of the same species that could be impacted by the specified activities from both projects.

Based on the analysis contained herein of the likely effects of the specified activities on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the Pier 58 Reconstruction Project will have a negligible impact on all affected marine mammal species or stocks. NMFS also preliminarily finds that the total marine mammal take from the Pier 63 Removal project will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The estimated take proposed to be authorized for each project is below one third of the population for all marine mammal stocks (Table 10 and 11).

Based on the analysis contained herein of the proposed activities (including the proposed mitigation and

monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks for the Pier 58 Reconstruction Project. NMFS also preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks for the Pier 63 Removal Project.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by either of these projects. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the West Coast Region Resources Division Office.

NMFS is proposing to authorize take of Southern Resident killer whales and Central America and Mexico DPSs of humpback whales, which are listed under the ESA.

The Permit and Conservation Division has requested initiation of Section 7 consultation with the West Coast Region for the issuance of these IHAs. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorizations.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue two IHAs to the City, one each for their Pier 58 Reconstruction Project and their Pier 63 Removal Project on the Seattle Waterfront in Seattle, Washington, effective as of August 2022, provided the previously discussed mitigation, monitoring, and reporting requirements are incorporated. The proposed IHAs can be found at <https://www.fisheries.noaa.gov/permit/>

incidental-take-authorizations-under-marine-mammal-protection-act.

Request for Public Comments

We request comment on our analyses, the proposed authorizations, and any other aspect of this notice of proposed IHAs for the proposed Pier 58 Reconstruction and Pier 63 Removal Projects. We also request at this time comment on the potential Renewal of these proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or subsequent Renewal IHAs.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

(1) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);

(2) The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

(3) Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate,

and the findings in the initial IHA remain valid.

Dated: February 28, 2022.

Kimberly Damon-Randall,
Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2022-04499 Filed 3-2-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB859]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Monday, March 21, 2022, at 9 a.m. Webinar registration URL information: <https://attendee.gotowebinar.com/register/2118013858816000525>.

ADDRESSES: Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will discuss Limited Access Leasing; review the updated draft scoping document that will be used to gather input on: (1) The need for a leasing program, and (2) and if needed, what should the leasing program consider. They will also discuss the Evaluation of Rotational Management; review final report, develop recommendations for next steps. Additionally, they plan to discuss the 2022-26 Council Research Priorities: Review current list of scallop research priorities and suggest updates. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come

before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: February 28, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022-04486 Filed 3-2-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB863]

Adjustment of Fees for Seafood Inspection Services

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

ACTION: Notice of a revised fee schedule for seafood inspection services.

SUMMARY: The NMFS Seafood Inspection Program is notifying program participants of a revised fee schedule.

DATES: The revised fee schedule applies to services rendered as of April 1, 2022, until notified otherwise.

FOR FURTHER INFORMATION CONTACT: Steven Wilson, Office of International Affairs and Seafood Inspection, 301-427-8350 or at steven.wilson@noaa.gov.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS) operates a fee-for-service seafood inspection program (Program) under the authorities of the Agricultural Marketing Act of 1946, as amended, the

Fish and Wildlife Act of 1956, and the Reorganization Plan No. 4 of 1970. The regulations implementing the Program are contained in 50 CFR parts 260 and 261. The Program offers inspection, grading, and certification services, including the use of official quality grade marks which indicate that specific products have been Federally inspected. Those wishing to participate in the program must request the services and submit specific compliance information. Since 1992, NMFS has offered inspection services based on guidelines recommended by the National Academy of Sciences, known as Hazard Analysis Critical Control Point (HACCP).

Under the implementing regulations for the Program, fees are reviewed at least annually to ascertain that the hourly fees charged are adequate to recover the costs of the services rendered. Any necessary adjustments to fees are made in accordance with the requirements of 50 CFR 260.81 and are notified to program participants as stipulated at 50 CFR 260.70. This **Federal Register** notice serves to inform program participants of an adjusted fee schedule, which applies to services rendered as of April 1, 2022, until notified otherwise.

NMFS will adjust its fees as outlined in this notice, which will apply until notified otherwise. Fees will be charged to contract and non-contract customers requesting services as listed below. The cost of other applicable services rendered will be recovered through fee collection using the base rate of \$164 per hour.

NMFS will continue to monitor revenues and expenses and will use adaptive adjustments to react to changing levels of demand and expenses. NMFS expects to announce additional changes to fees within the next year to recover the cost of the Program as nearly as possible. Additional fee increases may need to occur regularly to promote full cost recovery and to ensure the level and structure of reasonable fees are consistent with the cost of the services rendered and in accordance with accounting requirements.

Revised Fees and Charges for the U.S. Department of Commerce (USDC) Seafood Inspection Program

Effective April 1, 2022, per hour fees and charges for fishery products inspection services will be as follows. The base contract and non-contract rates will increase by 15 percent from the current established rate and will apply until notified otherwise. The rate for certificate requests will remain at the

established rate in effect as of June 2021. The rate for HACCP/Quality Management Program (QMP) contract services will decrease by 12 percent based on current estimates of the direct cost of delivering the services.

Contract Rates

Regular time: Services provided during any 8-hour shift.

Overtime: Services provided outside the inspector's normal work schedule.

In addition to any hourly service charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6:00 p.m. and before 6:00 a.m. A guarantee of payment is required for all contracts equal to three months of service or \$10,000, whichever is greater.

Non-Contract Rates

Regular time: Services provided within the inspector's normal work schedule, Monday through Friday.

Overtime: Services provided outside the inspector's normal work schedule.

Any services under contract in excess of the contracted hours will be charged at the non-contract rate.

Contract Rates

Non-HACCP Contracts

Regular Time: \$164.00

Overtime: \$246.00

Sunday & Holidays: \$328.00

HACCP/QMP Contracts

HACCP Regular: \$271.00

HACCP Overtime: \$407.00

HACCP Sunday & Holidays: \$542.00

All Non-Contract Work Rates

Regular Time: \$248.00

Overtime: \$372.00

Sunday & Holidays: \$496.00

Certificates

All certificate requests, whether or not a product inspection was conducted, will be billed at a set flat rate of \$99 per request.

Additional information about, and applications for, Program services and fees may be obtained from NMFS (see **FOR FURTHER INFORMATION CONTACT**).

Dated: February 25, 2022.

Alexa Cole,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2022-04419 Filed 3-1-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XB860]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Scallop Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Tuesday, March 22, 2022, at 9 a.m. Webinar registration URL information: <https://attendee.gotowebinar.com/register/5050963324931766029>.

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:**Agenda**

The Committee will discuss Limited Access Leasing: Review the updated draft scoping document that will be used to gather input on: (1) The need for a leasing program, and (2) and if needed, what should the leasing program consider. They will also discuss the Evaluation of Rotational Management: Review final report, develop recommendations for next steps. Additionally, they plan to discuss the 2022–26 Council Research Priorities: Review current list of scallop research priorities and suggest updates. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to

take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 28, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–04487 Filed 3–2–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XB818]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; availability of a Proposed Evaluation and Pending Determination for public comment.

SUMMARY: Notice is hereby given that NMFS has received seven plans for hatchery programs rearing and releasing Chinook salmon, coho salmon, and chum salmon in the Snohomish River basin. The plans describe hatchery programs operated by the Tulalip Tribes and Washington Department of Fish and Wildlife (WDFW). This document serves to notify the public of the availability and opportunity to comment on a Proposed Evaluation and Determination Documents (PEPD) on the proposed hatchery programs.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than 5 p.m. Pacific time on April 4, 2022. Comments received after this date may not be considered.

ADDRESSES: Comments may be submitted by email. The mailbox address for providing email comments is: Hatcheries.Public.Comment@noaa.gov. Include in the subject line of the email comment the following identifier: Comments on Snohomish River hatchery programs. The document

available for public comment are available on the internet at <https://www.fisheries.noaa.gov/action/hatchery-plans-chinook-coho-and-chum-salmon-snohomish-river-basin>.

FOR FURTHER INFORMATION CONTACT:

Morgan Robinson at (253) 307–2670 or by email at morgan.robinson@noaa.gov.

SUPPLEMENTARY INFORMATION:**ESA-Listed Species Covered in This Notice**

- Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*): Threatened, naturally and artificially propagated.
- Puget Sound Steelhead (*O. mykiss*): Threatened, naturally and artificially propagated.

Background

The term “take” is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The ESA prohibits the take of endangered salmonids and, pursuant to ESA section 4(d), ESA regulations can be extended to prohibit the take of threatened salmonids.

However, NMFS may make exceptions to the take prohibitions for hatchery programs that are approved by NMFS under the limits on the prohibitions outlined in 50 CFR 223.203(b). The operators, including the Tulalip Tribes and WDFW, have submitted HGMPs to NMFS pursuant to NMFS' limit six of the 4(d) Rule of the ESA for hatchery activities in the Snohomish River basin, Washington.

The hatchery programs are designed to contribute to the survival and recovery of Skykomish River summer Chinook salmon and Skykomish River chum salmon. These hatchery programs are intended to contribute to fulfilling federal tribal trust responsibilities and treaty rights guaranteed through treaties and affirmed in *U.S. v. Washington (1974)* by enhancing fishing opportunities for Chinook, coho, and chum salmon. Included in these hatchery plans is research and monitoring activities to study the effect of these programs on the recovery of Puget Sound Chinook salmon and steelhead.

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*

Dated: February 28, 2022.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–04516 Filed 3–2–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XB840]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Thursday, March 24, 2022, at 9 a.m. Webinar registration URL information: <https://attendee.gotowebinar.com/register/6464453692204784655>.

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:**Agenda**

The Committee will discuss development of Framework Adjustment 13 to the Monkfish Fishery Management Plan. They will also discuss 2023–25 fishery specifications as well as potential management measures (requiring 12-inch minimum mesh size for monkfish gillnets, requiring use of the Vessel Monitoring System across the federal fishery, measures to reduce discards in the Southern Fishery Management Area). They will discuss plans for the Plan Development Team and Advisory Panel to develop a fishery performance report. The Committee will also discuss recommendations for any updates for the 2022–26 NEFMC *Research Priorities and Data Needs* relative to monkfish. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any

issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 28, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–04507 Filed 3–2–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XB779]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferry Berth Improvements in Tongass Narrows, Alaska

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the Alaska Department of Transportation and Public Facilities (ADOT&PF) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of eight species of marine mammals, by Level A and Level B harassment, incidental to Ferry Berth Improvements at Tongass Narrows, near Ketchikan, AK. The project has been delayed and none of the work covered in the initial IHA has been conducted. The initial IHA was effective from March 1, 2021 through February 28, 2022. ADOT&PF has requested re-issuance with new effective dates of March 1, 2022, through February 28, 2023. The scope of the activities and

anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from March 1, 2022, through February 28, 2023.

ADDRESSES: An electronic copy of the final 2020 IHA previously issued to ADOT&PF, ADOT&PF application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting <https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Background**

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or

attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On January 7, 2020, NMFS published a final notice of our issuance of two consecutive IHAs authorizing take of marine mammals incidental to the Ferry Berth Improvements in Tongass Narrows, Alaska (85 FR 637). The effective dates of the first IHA were from March 1, 2020 through February 28, 2021 (Phase 1) while the effective dates of the second IHA were from from March 1, 2021 through February 28, 2022 (Phase 2). Due to various project delays and two minor changes in the activity, ADOT&PF requested a renewal of the Phase 1 IHA. NMFS issued renewal of the Phase 1 IHA on May 5, 2021 (86 FR 23938). On November 22, 2021, ADOT&PF informed NMFS that due to project delays none of the work identified in the initial Phase 2 IHA (e.g., pile installation and removal) had occurred. ADOT&PF submitted a request that we reissue an identical Phase 2 IHA that would be effective from March 1, 2022 through February 28, 2023, in order to conduct the construction work that was analyzed and authorized through the previously issued Phase 2 IHA. Therefore, re-issuance of the IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued Phase 2 IHA.

The purpose of ADOT&PF’s construction project is to improve facilities that provide reliable access to Ketchikan International Airport and facilitate growth and development in the region. Some of the existing ferry facilities are aging and periodically out-of-service for repairs or maintenance, and this project will provide redundant ferry berths to increase reliability. The location, timing, and nature of the

activities, including the types of equipment planned for use, are identical to those described in the initial Phase 2 IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Take of a small number of eight species of marine mammals has been authorized by NMFS. Three of those species, harbor seal (*Phoca vitulina richardii*), harbor porpoise (*Phocoena phocoena*), and Dall’s porpoise (*Phocoenoides dalli*) may be taken by Level A or Level B harassment while the remaining five species would be taken by Level B harassment only. These species include humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and Steller sea lion (*Eschrichtius robustus*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial Phase 2 IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the Phase 1 and Phase 2 IHAs for ADOT&PF construction work (85 FR 673; January 7, 2020), ADOT&PF application, the **Federal Register** notice of the proposed IHAs (84 FR 34134; July 17, 2019), and all associated references and documents.

Determinations

ADOT&PF will conduct activities as analyzed in the initial Phase 2 2021–2022 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The re-issued 2022 IHA includes identical required mitigation, monitoring, and reporting measures as the initial Phase 2 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will

effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) ADOT&PF’s activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with NMFS’ Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is authorizing take of the Central North Pacific stock of humpback whales, of which a portion belongs to the Mexico DPS of humpback whales, which are listed under the ESA.

The action agencies are the Federal Highway Administration (FHA) and the NMFS Office of Protected Resources Permits and Conservation Division. On February 6, 2019, NMFS completed consultation with ADOT&PF for Tongass Narrows Project and issued a Biological Opinion with the FHA as an

action agency. Reinitiation of formal consultation was required to add NMFS Permits and Conservation Division as an action agency and to analyze changes to the action that were not considered in the February 2019 opinion (PCTS# AKR-2018-9806/ECO# AKRO-2018-01287). The original opinion considered the effects of only one project component being constructed at a time and did not analyze potential effects of concurrent pile driving which may cause effects to the listed species that were not considered in the original opinion; therefore, reinitiation of formal consultation was required.

NMFS' Alaska Region issued a revised Biological Opinion to NMFS' Office of Protected Resources on December 19, 2019 which concluded that issuance of the Phase 1 and Phase 2 IHAs to ADOT&PF is not likely to jeopardize the continued existence of Mexico DPS humpback whales.

Authorization

NMFS has issued an IHA to ADOT&PF for in-water construction activities associated with the specified activity from March 1, 2022, through February 28, 2023. All previously described mitigation, monitoring, and reporting requirements from the initial Phase 2 IHA are incorporated.

Dated: February 25, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2022-04450 Filed 3-2-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB862]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council's (Council) District Advisory Panels (DAPs) will hold public virtual meetings to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The DAPs public virtual meetings will be held as follows: St. Thomas/St. John DAP, March 22, 2022; St. Croix DAP, March 23, 2022; and

Puerto Rico DAP, March 24, 2022. All meetings will be from 9 a.m. to 4 p.m., Atlantic Standard Time (AST).

ADDRESSES: You may join the DAPs public virtual meetings (via Zoom) from a computer, tablet or smartphone by entering the following addresses:

DAP-STT/STJ

Join Zoom Meeting:
<https://us02web.zoom.us/j/86262657165?pwd=aGQ4U25rME92d1p1TWo4d3Y3RGFrzd09>

Meeting ID: 862 6265 7165

Passcode: 901759

One tap mobile:

+17879451488,,86262657165#,,,,

*901759# Puerto Rico

+17879667727,,86262657165#,,,,

*901759# Puerto Rico

Dial by your location:

+1 787 945 1488 Puerto Rico

+1 787 966 7727 Puerto Rico

+1 939 945 0244 Puerto Rico

Meeting ID: 862 6265 7165

Passcode: 901759

DAP-STX

Join Zoom Meeting:
<https://us02web.zoom.us/j/84523918830?pwd=ZWdleXVrN2VzRW5MdVdJOS1BZVRNQT09>

Meeting ID: 845 2391 8830

Passcode: 507957

One tap mobile:

+17879451488,,84523918830#,,,,

*507957# Puerto Rico

+17879667727,,84523918830#,,,,

*507957# Puerto Rico

Dial by your location:

+1 787 945 1488 Puerto Rico

+1 787 966 7727 Puerto Rico

+1 939 945 0244 Puerto Rico

Meeting ID: 845 2391 8830

Passcode: 507957

DAP-PR

Join Zoom Meeting:
<https://us02web.zoom.us/j/86222659918?pwd=UitRcnBJRXQyMUpWaEtlSEZ6e1VvQT09>

Meeting ID: 862 2265 9918

Passcode: 623876

One tap mobile:

+19399450244,,86222659918

#,,, *623876# Puerto Rico

+17879451488,,86222659918

#,,, *623876# Puerto Rico

Dial by your location:

+1 939 945 0244 Puerto Rico

+1 787 945 1488 Puerto Rico

+1 787 966 7727 Puerto Rico

Meeting ID: 862 2265 9918

Passcode: 623876

FOR FURTHER INFORMATION CONTACT:

Miguel Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918-1903; telephone: (787) 398-3717.

SUPPLEMENTARY INFORMATION: The items included in the tentative agenda are:

- Call to Order
- Roll Call
- Adoption of Agenda
- Marine Protected Areas
- Other Business

All meetings will be discussing the same agenda items.

Other than the starting date and time, the order of business may be adjusted as necessary to accommodate the completion of agenda items, at the discretion of the Chair. The meetings will begin on March 22, 2022 at 9 a.m. AST, and will end on March 24, 2022, at 4 p.m. AST.

Special Accommodations

Simultaneous interpretation will be provided for the DAP-PR, on March 24, 2022. For simultaneous interpretation English-Spanish-English follow your Zoom screen instructions. You will be asked which language you prefer when you join the meeting. For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918-1903; telephone: (787) 226-8849.

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

Dated: February 28, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022-04488 Filed 3-2-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB856]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of webconference.

SUMMARY: The North Pacific Fishery Management Council (Council) Bering Sea Fishery Ecosystem Plan (BS FEP) Team will be held on March 18, 2022, and on March 21, 2022.

DATES: The meeting will be held on Friday, March 18, 2022, from 8 a.m. to 12 p.m. and on Monday, March 21, 2022, from 8 a.m. to 12 p.m., Alaska Time.

ADDRESSES: The meeting will be a webconference. Join online through the

link at <https://meetings.npfmc.org/Meeting/Details/2858>.

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501-2252; telephone: (907) 271-2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Dian Evans, Council staff; phone: (907) 271-2809 and email: diana.evans@noaa.gov. For technical support, please contact our administrative staff; email: npfmc.admin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Agenda

Friday, March 18, 2022, and Monday, March 21, 2022

The agenda will include: (a) Introductions, agenda, and team member roundtable; (b) discuss FEP team Health Report Prototype; (c) BS FEP taskforce progress; (d) planning for further Health Report work; and (e) other business. The agenda is subject to change, and the latest version will be posted at <https://meetings.npfmc.org/Meeting/Details/2853> prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: <https://meetings.npfmc.org/Meeting/Details/2853>.

Public Comment

Public comment letters will be accepted and should be submitted electronically to <https://meetings.npfmc.org/Meeting/Details/2853>.

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

Dated: February 25, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022-04418 Filed 3-2-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB849]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold a public meeting of its Mackerel, Squid, and Butterfish (MSB) Monitoring Committee. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Friday, March 18, 2022, from 1:30 p.m. until 4 p.m.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar prior to the meeting at www.mafmc.org.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The Council's Mackerel, Squid, and Butterfish (MSB) Monitoring Committee will review recent fishery performance and the Scientific and Statistical Committee's (SSC) catch recommendations regarding *Illex* squid and Atlantic mackerel. Based on the SSC's recommendations, the Monitoring Committee will develop recommendations about *Illex* squid specifications and Atlantic mackerel rebuilding.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526-5251, at least 5 days prior to the meeting date.

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

Dated: February 25, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022-04417 Filed 3-2-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB819]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of modified Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that NMFS has modified a Letter of Authorization (LOA) issued to Shell Offshore Inc. (Shell) on December 2, 2021, for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The modified LOA is effective through August 31, 2022.

ADDRESSES: The modified LOA and modification request, original LOA and LOA request, and supporting documentation are available online at: www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds

that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively “industry operators”), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322). The rule was based on our findings that the total taking from the specified activities over the five-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take

authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

NMFS issued an LOA to Shell on December 2, 2021, effective through August 31, 2022, for the take of marine mammals incidental to a 3D ocean bottom node (OBN) survey of Mississippi Canyon Lease Block 809 and portions of the surrounding approximately 143 lease blocks in the Ursa development area (see Section F in Shell’s application). Shell initially anticipated conducting a total of 45 days of sound source operation over the period of LOA effectiveness (over a total survey period of 61 days). The survey activity itself is permitted under Bureau of Ocean Energy Management (BOEM) permit L21–036. Please see the **Federal Register** notice of issuance (86 FR 69622; December 8, 2021) for additional detail regarding the LOA and the survey activity.

Since issuance of the LOA, no survey work has occurred under that LOA. Shell has been conducting survey activity in the same lease block areas under its existing BOEM permit L20–029, which was issued during a litigation settlement agreement prior to NMFS’ MMPA rule becoming effective. As a result of unforeseen delays in survey effort under BOEM permit L20–029, Shell now expects that it will be necessary to shift some of that effort to the subsequent period (under BOEM permit L21–036) addressed through NMFS’ December 2, 2021, LOA, and has requested modification of the LOA accordingly. Thus Shell’s revised estimate of survey effort for the LOA includes 63 days of sound source operation rather than 45. There are no other changes to Shell’s planned activity.

Consistent with the preamble to the final rule, the survey effort proposed by Shell in its request for a modification to the existing LOA was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone¹); (3) number of days; and (4) season.² The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species,

¹ For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

² For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

specific to each modeled survey type in each zone and season. Of the planned 63 days of sound source operation, Shell indicates that 28 days would occur in winter and 35 days in summer. Previously, the seasonal distribution of survey days was considered unknown and the take estimates for each species were based on the season that produced the greater value. There are no other changes to the information used in producing the take estimates. NMFS’ prior assumptions regarding the likelihood of encounter for Rice’s whales³ and killer whales remain valid and are incorporated by reference here (86 FR 69622; December 8, 2021). Please see the original notice of issuance for the LOA for additional detail regarding the assumptions made in generating the take estimates and regarding the aforementioned species.

Updated take numbers for the modified LOA are indicated below (see Table 1). Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule.

Small Numbers Determinations

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed “small numbers.” In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS’ discussion of the MMPA’s small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than one day (see 86 FR 5322, 5404; January

³ The final rule refers to the GOM Bryde’s whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice’s whale (*Balaenoptera ricei*) (Rosel *et al.*, 2021).

19, 2021). The output of this scaling, where appropriate, is incorporated into an adjusted total take estimate that is the basis for NMFS' small numbers determinations, as depicted in Table 1.

This product is used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this

comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments) and model-predicted abundance information (<https://seamap.env.duke.edu/models/Duke/GOM/>). For the latter, for taxa where a density surface model could be

produced, we use the maximum mean seasonal (*i.e.*, 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS, URSA LOA

Species	Authorized take	Scaled take ¹	Abundance ²	Percent abundance
Rice's whale	0	n/a	51	n/a
Sperm whale	1,650	698.1	2,207	31.6
<i>Kogia</i> spp	³ 611	218.5	4,373	5.0
Beaked whales	7,197	726.9	3,768	19.3
Rough-toothed dolphin	1,237	354.9	4,853	7.3
Bottlenose dolphin	5,760	1,653.1	176,108	0.9
Clymene dolphin	3,439	987.1	11,895	8.3
Atlantic spotted dolphin	2,339	671.3	74,785	0.9
Pantropical spotted dolphin	15,608	4,479.4	102,361	4.4
Spinner dolphin	4,182	1,200.3	25,114	4.8
Striped dolphin	1,343	385.5	5,229	7.4
Fraser's dolphin	394	113.1	1,665	6.8
Risso's dolphin	1,010	297.9	3,764	7.9
Melon-headed whale	2,306	680.4	7,003	9.7
Pygmy killer whale	538	158.7	2,126	7.5
False killer whale	856	252.5	3,204	7.9
Killer whale	7	n/a	267	2.6
Short-finned pilot whale	667	196.8	1,981	9.9

¹ Scalar ratios were applied to "Authorized Take" values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

² Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.*, 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.

³ Includes 33 takes by Level A harassment and 578 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of Shell's proposed survey activity described in its LOA modification request and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for the LOA modification request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the modified LOA is of no more than small numbers. NMFS has modified the LOA to Shell authorizing the take of marine mammals incidental to its planned survey activity, for the reasons described above.

Dated: February 25, 2022.
Kimberly Damon-Randall,
Director, Office of Protected Resources,
National Marine Fisheries Service.
 [FR Doc. 2022-04449 Filed 3-2-22; 8:45 am]
BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Department of the Army

Programmatic Environmental Assessment and Draft Finding of No Significant Impact Regarding Iron Dome Defense System—Army

AGENCY: Department of the Army, Defense (DoD).

ACTION: Notice of Availability.

SUMMARY: The Department of the Army (Army) announces the availability of a Programmatic Environmental Assessment (PEA) and a Draft Finding of No Significant Impact (FONSI) regarding the proposed fielding of two

Iron Dome Defense System—Army (IDDS-A) batteries. In accordance with the National Environmental Policy Act (NEPA), the PEA analyzes the potential environmental impact of IDDS-A at each candidate-installation. That is, the PEA analyzes the potential environmental impact of the additional soldiers, materiel, and training that are required to field IDDS-A. The Proposed Action would enhance the defensive capability of fixed and semi-fixed assets against aerial threats.

DATES: Comments must be received by April 4, 2022 to be considered in finalizing the PEA and Draft FONSI.

ADDRESSES: Please mail comments to U.S. Army Environmental Command, ATTN: IDDS-A Public Comments, 2455 Reynolds Road, Mail Stop 112, JBSA-Fort Sam Houston, TX 78234-7588, or email comments to usarmy.jbsa.imcom-aec.mbx.nepa@army.mil with "IDDS-A Public Comments" in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Kropp, U.S. Army Environmental

Command Public Affairs Office, by email (usarmy.jbsa.imcom-aec.mbx.nepa@army.mil), by mail (U.S. Army Environmental Command, ATTN: Public Affairs, 2455 Reynolds Road, Mail Stop 112, JBSA-Fort Sam Houston, TX 78234-7588), or by phone (210-466-1590 or 210-488-6061).

SUPPLEMENTARY INFORMATION: The purpose of the Proposed Action is to field two batteries of IDDS-A in fiscal year (FY) 2022 and improve the defense of fixed and semi-fixed sites (e.g., airfields and forward operating bases). IDDS-A would enhance the Army's capacity to defend against attacks from aircraft, cruise missiles (CM), unmanned aerial systems (UAS), and rocket, artillery, and mortar (RAM) fire. The Army has been developing an air defense system for years, but it is not yet ready to deploy. The Proposed Action ensures compliance with Section 112 of the John S. McCain National Defense Authorization Act for FY 2019 (Pub. L. 115-232), which requires the Army to deploy an interim missile defense capability while the Army continues to develop an enduring solution. After evaluating existing air defense systems, the Army chose IDDS-A as the interim capability. This capability is part of an air and missile defense modernization strategy that seeks to improve systems across the air defense portfolio.

IDDS-A is a mobile, all-weather, air defense system designed to intercept RAM threats fired from distances of up to 70 km. It is also effective against CM, UAS, airplane, and helicopter threats. Each IDDS-A battery would consist of approximately 60 soldiers, 13 heavy expanded mobility tactical trucks, six missile-firing units, one radar system, battle management and communications systems, and support equipment. All soldiers would be outfitted with a standard set of small arms and equipment. Since IDDS-A is an interim solution, the Army does not intend to construct additional office space, maintenance space, barracks, or training ranges in support of IDDS-A at this time.

The Army considered multiple locations at which existing temporary or

permanent infrastructure can accommodate IDDS-A units and at which training can be accomplished through live fire or approved simulations. These installations met a number of mission-related screening criteria. The Action Alternative is to field the IDDS-A batteries at one or two of seven installations: Fort Bliss, TX; Fort Hood, TX; Fort Campbell, KY; Fort Riley, KS; Fort Sill, OK; Fort Stewart, GA; and Joint Base Lewis-McChord, WA.

The PEA analyzes the potential environmental impact associated with the Proposed Action at each assessed installation, including direct, indirect, and cumulative effects. The Army did not conduct a detailed analysis of socioeconomic impacts because relative to the assessed installations' respective populations, the IDDS-A batteries represent a small percentage of total personnel. The PEA takes into account minimization measures, standard procedures, and best practices routinely employed by the relevant installations to mitigate the adverse effects of similar actions.

The PEA also studied a No-Action Alternative. While the No-Action Alternative would not satisfy the purpose of or need for the Proposed Action, it provides a comparative baseline against which to examine the effects of the Proposed Action and the Action Alternative.

Resources considered in the PEA include biological resources, cultural resources, water resources, soils, land use/compatibility, and facilities. Based on the PEA's findings, the Army expects the environmental impact of the Proposed Action at all assessed installations to be less than significant (i.e., negligible or minor).

Government agencies, Native American Tribes, and the public are invited to review and comment on the PEA and Draft FONSI. The public comment period begins with publication of this Notice of Availability in the **Federal Register** and lasts for 30 days. The PEA and Draft FONSI are available on the U.S. Army Environmental Command website at <https://aec.army.mil/>

[index.php?CID=352](https://aec.army.mil/index.php?CID=352). If you cannot access the PEA and Draft FONSI online, please request a hard copy by contacting U.S. Army Environmental Command by email (usarmy.jbsa.imcom-aec.mbx.nepa@army.mil), by mail (U.S. Army Environmental Command, ATTN: Public Affairs, 2455 Reynolds Road, Mail Stop 112, JBSA-Fort Sam Houston, TX 78234-7588), or by phone (210-466-1590 or 210-488-6061).

The Army will consider all timely public comments and will thereafter issue either a Final FONSI or a Notice of Intent to prepare an Environmental Impact Statement. Comments must be received or postmarked by April 4, 2022 to be considered.

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2022-04465 Filed 3-2-22; 8:45 am]

BILLING CODE 3711-02-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-0F]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697-9214.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21-0F with attached Policy Justification.

Dated: February 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY
 201 12TH STREET SOUTH, SUITE 101
 ARLINGTON, VA 22202-5408

March 19, 2021

The Honorable Nancy Pelosi
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 21-0F. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 20-67 of October 9, 2020.

Sincerely,

Heidi H. Grant
 Director

Enclosures:

1. Transmittal

BILLING CODE 5001-06-C

Transmittal No. 21-0F

Report of Enhancement or Upgrade of Sensitivity of Technology or Capability (Sec. 36(b)(5)(c), AECA)

(i) *Purchaser:* Government of Finland

(ii) *Sec. 36(b)(1), AECA Transmittal*

No.: 20-67

Date: October 9, 2020

Military Department: Navy

(iii) *Description:* On October 9, 2020 Congress was notified by Congressional certification transmittal number 20-67 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of fifty (50) F/A-18E Super Hornet aircraft; eight (8) F/A-18F Super Hornet aircraft; fourteen (14) EA-18G Growler

aircraft; one hundred sixty-six (166) F414-GE-400 engines (144 installed and 22 spares); five hundred (500) GBU-53/B Small Diameter Bomb II (SDB II) All-Up Round (AUR); twelve (12) GBU-53/B SDB II Guided Test Vehicles (GTV); twelve (12) GBU-53/B SDB II Captive Carry Reliability Trainers; one hundred fifty (150) AIM-9X Block II Sidewinder Tactical Missiles; thirty-two (32) AIM-9X Block II Sidewinder Captive Air Training Missiles (CATMs); thirty (30) AIM-9X Block II Sidewinder Tactical Guidance Units; eight (8) AIM-9X Block II Sidewinder CATM Guidance Units; one hundred sixty (160) AGM-154C-1 Joint Stand Off Weapons (JSOW); two hundred (200) AGM-158B-2B Joint Air-

to-Surface Standoff Missile Extended Range All Up Rounds (JASSM ER AUR); two (2) AGM-158B-2 JASSM Separation Test Vehicles (STV); two (2) AGM-158B-2 JASSM Instrumented Test Vehicles (ITV); two (2) AGM-158B-2 JASSM Jettison Test Vehicles (JTV); two (2) AGM-158B-2 Inert Joint Air-to-Surface Standoff Missile (JASSM) with Telemetry Instrumental Kits; two (2) AGM-158B-2 JASSM Maintenance Training Missiles (DATM); one hundred twenty (120) BLU-117B/B 2000LB GP Bombs; one hundred twenty (120) KMU-556F/B Bomb Tail Kits (JDAM); three hundred (300) FMU-139D/B Fuzes; two (2) KMU-556(D-2)/B Trainers (JDAM); thirty (30) BLU-109C/B 2000LB Bombs;

thirty (30) KMU-557F/B Bomb Tail Kits (JDAM); two (2) BLU-109(D-1)/B 2000LB Bombs; one hundred two (102) BLU-111B/B 500LB General Purpose Bombs; one hundred two (102) KMU-572F/B JDAM Bomb Tail Kits; six (6) MK-82-0,1 500LB, General Purpose Bombs, Inert; fifty-one (51) BLU-110B/B 1000LB General Purpose Bombs; fifty (50) KMU-559F/B Bomb Tail Kits; fifty-eight (58) M61A2 20MM Gun Systems; thirty-two (32) Advanced Targeting Forward-Looking Infrared (ATFLIR); thirty-two (32) Sniper Targeting Pods; fourteen (14) Advanced Electronic Attack Kit for EA-18G; sixty-five (65) AN/ALR-67(V)3 Electric Warfare Countermeasures Receiving Sets; sixty-five (65) AN/ALQ-214 Integrated Countermeasures Systems; seventy-four (74) Multifunctional Information Distribution Systems—Joint Tactical Radio Systems (MIDS) JTRS; eighty-nine (89) Joint Helmet Mounted Cueing Systems (JHMCS); three hundred seventy-seven (377) LAU-127E/A Guided Missile Launchers; seventy-four (74) AN/AYK-29 Distributed Targeting Processor—Networked (DTP-N); twenty-five (25) Infrared Search and Track (IRST) Systems; and eight (8) Next Generation Jammer Mid-Band (NGJ-MB) sets. Also included are AN/APG-79 Active Electronically Scanned Array (AESA) radars; High Speed Video Network (HSVN) Digital Video Recorder (HDVR); AN/AVS-9 Night Vision Goggles (NVG); AN/AVS-11 Night Vision Cueing Devices (NVCD); AN/ALE-47 Electronic Warfare Countermeasures Systems; AN/ARC-210 Communication System; AN/APX-111 Combined Interrogator Transponder; AN/ALE-55 Towed Decoys; Launchers (LAU-115D/A, LAU-116B/A, LAU-118A); AN/AAQ-28(V) Litening Targeting Pod; Joint Mission Planning System (JMPS); Accurate Navigation (ANAV) Global Positioning System (GPS) Navigation; Aircraft Armament Equipment (AAE); Aircraft Ferry transportation; Foreign Liaison Officer (FLO) Support; Auxiliary Fuel Tanks, FMU-139D(D-2)/B fuzes; MK84-4 2000LB General Purpose Inert Bombs, MK83 Bomb General Purpose Inert Bombs; KMU-557C(D-2)/B tail kits; KMU-572C(D-2)/B tail kits; Detector Laser DSU-38A/B, Detector Laser DSU-38A(D-2)/B, KMU-559C(D-2)/B load trainer; Wing Release Lanyard Assemblies; AGM-154C-1 JSOW Captive Flight Vehicles, Dummy Air Training Missiles, AGM-154C-1 JSOW mission planning, integration support and testing, munitions storage security and training, weapon operational flight program software development;

weapons containers; aircraft and munitions support and test equipment; communications equipment; provisioning, spares and repair parts; weapons repair and return support; personnel training and training equipment; weapon systems software, publications and technical documents; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support. The total estimated cost was \$14.7 billion. Major Defense Equipment (MDE) constituted \$9.2 billion of this total.

This transmittal reports the inclusion of the following additional MDE items: up to three hundred (300) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM); up to six (6) AMRAAM Guidance Sections (spares); up to five hundred (500) GBU-39/B Small Diameter Bomb Increment 1 (SDB I) munitions with CNU-659 containers; two (2) GBU-39 (T-1)/B inert practice bombs; up to fifteen (15) AN/ALQ-99 Government Furnished Export (GFX); up to sixty-seven (67) AN/ALR-67(V)3 Electric Warfare Countermeasures Receiving sets; up to sixty-seven (67) AN/ALQ-214 Integrated Countermeasures Systems; up to fifteen (15) AN/ALQ-249 Next Generation Jammer Mid-Band (NGJ-MB) sets; two hundred (200) FMU-139D/B fuzes; one hundred ninety eight (198) BLU-111B/B 500LB general purpose bombs; and one hundred ninety eight (198) KMU-572F/B JDAM bomb tail kits. The following non-MDE items will also be included: up to six (6) AMRAAM Control Sections (spares); up to thirty-two (32) AMRAAM Captive Air Training Missiles (CATMs); containers; weapon system support equipment; support and test equipment; site surveys; spare and repair parts; repair and return support; publications and technical data; maintenance and aircrew training; and other related elements of logistics support.

The total cost of the new MDE articles is \$1.377 billion, and the total cost of the new non-MDE articles is \$50 million. The total notified cost of MDE will increase to \$10.577 billion, and the total notified case value will increase to \$16.127 billion.

(iv) *Significance*: This notification is being provided to report the inclusion of MDE items not previously notified. Their inclusion represents an increase in capability over what was previously notified. The proposed articles and services will support Finland's proposed procurement of the F/A-18E and EA-18G weapons systems.

(v) *Justification*: This proposed sale will support the foreign policy and

national security of the United States by improving the security of a trusted partner which is an important force for political stability and economic progress in Europe. It is vital to the U.S. national interest to assist Finland in developing and maintaining a strong and ready self-defense capability.

(vi) *Sensitivity of Technology*: The AIM-120C-8 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. The potential sale will include AMRAAM Guidance Sections. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. The AIM-120C-8 is a form, fit, function refresh of the AIM-120C-7 and is the next generation to be produced.

The GBU-39 Small Diameter Bomb Increment 1 (SDB I) is a 250-lb GPS-aided inertial navigation system, small autonomous, day or night, adverse weather, conventional, air-to-ground precision glide weapon able to strike fixed and stationary re-locatable non-hardened targets from standoff ranges. It is intended to provide aircraft with an ability to carry a high number of bombs. Aircraft are able to carry four SDB I's in place of one 2,000-pound bomb. The SDB I Guided Test Vehicle (GTV) is an SDB I configuration used for land or sea range-based testing of the SDB I weapon system. The GTV has common flight characteristics of an SDB I All-Up Round (AUR), but in place of the multi-effects warhead is a Flight Termination, Tracking, and Telemetry (FTTT) subassembly that mirrors the AUR multi-effects warhead's size and mass properties, but provides safe flight termination, free flight tracking and telemetry of encrypted data from the GTV to the data receivers. The SDB I GTV can have either inert or live fuzes. All other flight control, guidance, data-link, and seeker functions are representative of the SDB I.

The AN/ALQ-99 Government Furnished Export (GFX) is an external carriage Airborne Electronic Attack capability for the EA-18G Growler aircraft used against radar and communications targets for the suppression of enemy integrated air defenses.

The Sensitivity of Technology Statement contained in the original notification applies to the other items reported here. The highest level of classification of defense articles,

components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: March 19, 2021.

[FR Doc. 2022-04471 Filed 3-2-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2022-OS-0028]

Proposed Collection; Comment Request

AGENCY: Washington Headquarters Services (WHS), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Washington Headquarters Services announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 2, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Pentagon Athletic Center, 1155 Defense Pentagon, Washington, DC 20301-115, Lisa Modeste, or call 703-614-6710.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Pentagon Athletic Center Membership Application; WHS Form 19; OMB Control Number 0704-PACM.

Needs and Uses: The WHS Form 19 is necessary to obtain information from respondents who seek to become a member of the Pentagon Athletic Center (PAC). Information that is collected includes home address, email, and full name, in order to build a profile for each member in the membership database. Respondents of the WHS-19 are government civilians, contractors, active duty and retired personnel in the National Capital Region. The membership application is in paper format, available at the PAC. It is also available online at whs.pac.mil.

Affected Public: Individuals or households.

Annual Burden Hours: 572.67.

Number of Respondents: 3,436.

Responses per Respondent: 1.

Annual Responses: 3,436.

Average Burden per Response: 10 minutes.

Frequency: On Occasion.

Dated: February 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022-04485 Filed 3-2-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-38]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697-9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21-38 with attached Policy Justification and Sensitivity of Technology.

Dated: February 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY
 201 12TH STREET SOUTH, SUITE 101
 ARLINGTON, VA 22202-5408

APR 23 2021

The Honorable Nancy Pelosi
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-38, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost \$1.651 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Heidi H. Grant
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001-06-C

Transmittal No. 21-38

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Australia

(ii) *Total Estimated Value:*

Major Defense Equip- ment *	\$.651 billion
Other	\$1.000 billion
Total	\$1.651 billion

(iii) *Description and Quantity or Quantities of Articles or Services under consideration for Purchase:*

Major Defense Equipment (MDE):

- Up to twelve (12) Weapons-Ready MQ-9B, Remotely Piloted Aircraft
- Fifteen (15) Raytheon Multi-Spectral Targeting Systems-D (MTS-D) EO/IR Sensors
- Sixteen (16) Lynx AN/APY-8 Synthetic Aperture Radars (SAR) with Ground Moving Target Indicator (GTMI)

- Fifteen (15) RIO™ Communication Intelligence Systems
- Thirty-six (36) Embedded Global Positioning System/Inertial Navigations Systems (EGI) with Selective Availability Anti-Spoofing Modules (SAASMs)
- Six (6) KMU-572 Joint Direct Attack Munitions (JDAM) Tail Kits for 500lb Bombs
- Four (4) MXU-650 Airfoil Groups for 500lb Paveway II GBU-12
- Seven (7) MXU-1006 Airfoil Groups for 250lb Paveway II GBU-58

Four (4) MAU-169 or MAU-209 Computer Control Groups (CCGs) for 250lb/500lb Paveway II GBU-58/GBU-12

Six (6) FMU-139 Fuse Systems

Twelve (12) MK-82 General Purpose 500lb Inert Bombs

Five (5) High Bandwidth Compact Telemetry Modules (HCTMs)

Non-MDE: Also included are Honeywell aircraft engines; Certifiable Ground Control Stations (CGCSs); mobile Satellite Communication Ground Data Terminals (SGDTs); Leonardo SAGE 750 Electronic Surveillance Measures System (ESM); GATES/RSO/GRMA; Automatic Information System (AIS); ARC-210 radios; AN/DPX-7 IFF transponders; General Dynamics Satellite Communication (SATCOM) antennas and Hughes modems with USG encryption; Leonardo/Selex SeaSpray 7500 maritime radars; KY-100M security voice terminals; KIV-77 Mode 4/5 IFF cryptographic appliques; AN/PYQ-10C Simple Key Loaders; U.S. Government Certified Encryption Solution; KOR-24A Small Tactical Terminal Link-16; Sierra Nevada Electronic Intelligence System; additional secure communications and cryptographic equipment; MQ-9B training simulator; Hellfire Training Missiles, missile rail kits and integration; M-299 Hellfire Rail Launchers; DSU-38 Laser Illuminated Target Detector for GBU-54; MK-81 General Purpose Bombs 250lb Inert Bombs; aircraft and weapons integration, test, and test equipment; additional ground support and test equipment; initial spare repair parts; repair & return; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering; technical, and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (AT-D-SAG)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc. Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* April 23, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—MQ-9B Remotely Piloted Aircraft

The Government of Australia has requested to buy up to twelve (12)

Weapons-Ready MQ-9B, Remotely Piloted Aircraft; fifteen (15) Raytheon Multi-Spectral Targeting Systems-D (MTS-D) EO/IR sensors; sixteen (16) Lynx AN/APY-8 Synthetic Aperture Radars (SAR) with Ground Moving Target Indicator (GTMI); fifteen (15) RIO™ Communication Intelligence Systems; thirty-six (36) Embedded Global Positioning System/Inertial Navigations Systems (EGI) with Selective Availability Anti-Spoofing Modules (SAASMs); six (6) KMU-572 Joint Direct Attack Munitions (JDAM) tail kits for 500lb bombs; four (4) MXU-650 Airfoil Groups for 500lb Paveway II GBU-12; seven (7) MXU-1006 Airfoil Groups for 250lb Paveway II GBU-58; four (4) MAU-169 or MAU-209 Computer Control Groups (CCGs) for 250lb/500lb Paveway II GBU-58/GBU-12; six (6) FMU-139 Fuse Systems; twelve (12) MK-82 General Purpose 500lb inert bombs; five (5) High Bandwidth Compact Telemetry Modules (HCTMs). Also included are Honeywell aircraft engines; Certifiable Ground Control Stations (CGCSs); mobile Satellite Communication Ground Data Terminals (SGDTs); Leonardo SAGE 750 Electronic Surveillance Measures System (ESM); GATES/RSO/GRMA; Automatic Information System (AIS); ARC-210 radios; AN/DPX-7 IFF transponders; General Dynamics Satellite Communication (SATCOM) antennas and Hughes modems with USG encryption; Leonardo/Selex SeaSpray 7500 maritime radars; KY-100M security voice terminals; KIV-77 Mode 4/5 IFF cryptographic appliques; AN/PYQ-10C Simple Key Loaders; U.S. Government Certified Encryption Solution; KOR-24A Small Tactical Terminal Link-16; Sierra Nevada Electronic Intelligence System; additional secure communications and cryptographic equipment; MQ-9B training simulator; Hellfire Training Missiles, missile rail kits and integration; M-299 Hellfire Rail Launchers; DSU-38 Laser Illuminated Target Detector for GBU-54; MK-81 General Purpose Bombs 250lb Inert Bombs; aircraft and weapons integration, test, and test equipment; additional ground support and test equipment; initial spare repair parts; repair & return; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering; technical, and logistics support services; and other related elements of logistical and program support. The overall total estimated value is \$1.651 billion.

This proposed sale will support the foreign policy and national security

objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability.

The proposed sale improves Australia's capability to meet current and future threats by providing timely Intelligence, Surveillance, and Reconnaissance (ISR), target acquisition, locate submarine capabilities, and counter-land and counter-surface sea capabilities for its security and defense. This sale will enhance interoperability between the U.S. Air Force and the Royal Australian Air Force (RAAF). Australia has demonstrated a commitment to modernizing its military and will have no difficulty absorbing this equipment into its armed forces.

The principal contractors will be General Atomic Aeronautical Systems Inc., San Diego, CA; Lockheed Martin Inc., Bethesda, MD; Raytheon Inc., Waltham MA; and Leonardo SpA, Rome, Italy. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21-38

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The MQ-9B Remotely Piloted Aircraft (RPA) is a weapons-ready aircraft designed for Medium-Altitude Long-Endurance (MALE) Intelligence, Surveillance and Reconnaissance (ISR), Target Acquisition, and Strike Missions. The MQ-9B RPA is not a U.S. Air Force program of record but has close ties to, and builds upon, the proven success of the MQ-9A Reaper. The MQ-9B is a highly modular, easily configurable aircraft that contains the necessary hard points, power, and data connections to accommodate a variety of payloads and munitions to meet multiple missions, including counter-land, counter-sea, and anti-submarine strike operations. The system is designed to be controlled by two operators within a Certifiable

Ground Control Station (CGCS). The CGCS is designed to emulate a reconnaissance aircraft cockpit, giving users extensive means to operate both the aircraft and sensors. The MQ-9B is able to operate using a direct Line-of-Sight (LOS) datalink or Beyond Line-of-Sight (BLOS) through satellite communications (SATCOM). The MQ-9B system can be deployed from a single site that supports launch/recovery, mission control, and maintenance. The system also supports remote-split operations where launch/recovery and maintenance occur at a Forward Operating Base (FOB) and mission control is conducted from another location or Main Operating Base (MOB).

2. The Raytheon Multi-Spectral Targeting Systems-D (MTS-D) EO/IR sensors is a multi-spectral Targeting System with Laser Target Designator (LTD). A multi-use Electro Optical (EO)/infrared (IR) sensor provides long-range surveillance, high-altitude target acquisition, tracking, range-finding, and laser designation for all tri-service and NATO laser-guided munitions, with capabilities up to and including high definition color TV, high definition short-wave IR, medium-wave IR, and long-wave IR sensors. The AN/DAS-4 is an evolutionary upgrade to the current AN/DAS-1 system.

3. The Lynx AN/APY-8 Synthetic Aperture Radars (SAR) with Ground Moving Target Indicator (GTMI) System provides all-weather surveillance, tracking, and targeting for military and commercial customers from manned and unmanned vehicles.

4. The L3 Harris RIO™ Communications Intelligence System incorporates radio receivers and flexible digital processing to create the ability to intercept, location, and copy adversary communications. The system is flexible enough that it can detect a wide variety of types of communications. The open design allows the system to be upgraded with new software features as adversary communications change.

5. The Honeywell TPE-331-10-GD Turboprop Engine is used in a variety of airborne platforms, including the MQ-9B.

6. The Ground Control Station (GCS) can be either fixed or mobile. The fixed GCS is enclosed in a customer-specified shelter. It incorporates workstations that allow operators to control and monitor the aircraft, as well as record and exploit downlinked payload data. The mobile GCS allows operators to perform the same functions and is contained on a mobile trailer. Workstations in either GCS can be tailored to meet customer requirements.

7. The Embedded GPS-INS (EGI) with Selective Availability Anti-Spoofing Module (SAASM) is a self-contained navigation system that provides the following: acceleration, velocity, position, attitude, platform azimuth, magnetic and true heading, altitude, body angular rates, time tags, and coordinated universal time (UTC) synchronized time. SAASM enables the GPS receiver access to the encrypted P(Y) signal providing protection against active spoofing attacks.

8. Leonardo SeaSpray Maritime Multi-Role Patrol Radar is a synthetic aperture X-band radar that provides small-target maritime detection in high seas, maritime search (including submarine periscopes and semi-submersibles), radar imaging of ocean targets, and weather detection and avoidance.

9. The SAGE 750 Electronic Surveillance Measures (ESM) System is a United Kingdom-produced digital electronic intelligence (ELINT) sensor that analyzes the electromagnetic spectrum to map the source of active emissions. Using highly accurate Direction Finding (DF) antennas, SAGE builds target locations and provides situational awareness, advance warning of threats, and the ability to cue other sensors.

10. The C-Band Line-of-Sight (LOS) Ground Data Terminals and Ku-Band SATCOM GA-ASI Transportable Earth Stations (GATES) provide command, control, and data acquisition for the MQ-9B.

11. The ARC-210 UHF/VHF secure radio is a voice communications radio system that can operate in either normal, secure, and/or jam-resistant modes.

12. The KOR-24A Small Tactical Terminal Link-16 is a command, control communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements.

13. The AN/DPX-7 is an Identification Friend or Foe (IFF) Transponder used to identify and track aircraft, ships, and some ground forces to reduce friendly fire incidents.

14. The KY-100M is a lightweight terminal for secure voice and data communications. The KY-100M provides wideband/narrowband half-duplex communication. Operating in tactical ground, marine and airborne applications, the KY-100M enables secure communication with a broad range of radio and satellite equipment.

15. The KIV-77 Mode 5 crypto applique computer for IFF is Type 1

certified by the National Security Agency and provides information assurance for both legacy Mode 4 and new Mode 5 IFF equipment. The KIV-77 is used to store the classified keys.

16. The AN/APQ-10C Simple Key Loader is a handheld fill device for securely receiving, storing, and transferring data between cryptographic and communications equipment.

17. The Joint Direct Attack Munitions (JDAM) is a guidance set that converts existing unguided bombs (MK-82, MK-83, MK-84, BLU-109, BLU-110, BLU-111, BLU-117, BLU-126 (Navy) or BLU-129 warhead) into an accurate, adverse weather "smart" munition. The Guidance Set consists of a Tail Kit, which contains the Inertial Navigation System (INS) and a Global Positioning System (GPS), and a set of Aerosurfaces and an umbilical Cover, which allows the JDAM to improve the accuracy of unguided, general purpose bombs. The Guidance Set, when combined with a warhead and appropriate fuse, forms a JDAM Guided Bomb Unit (GBU). The JDAM weapon can be delivered from modest standoff ranges at high or low altitudes against a variety of land and surface targets during the day or night. After release, JDAM autonomously guides to a target, using the resident GPS-aided INS guidance system. The JDAM is capable of receiving target coordinates via preplanned mission data from the delivery aircraft, by onboard aircraft sensors (i.e., FLIR, Radar, etc.) during captive carry, or from a third-party source via manual or automated aircrew cockpit entry.

The KMU-572 is the guidance set for a GBU-38 (500-pound bomb body) JDAM Tail Kit.

18. The Laser JDAM (GBU-54) is a 500-pound JDAM that incorporates all the capabilities of the JDAM guidance kit and adds a precision laser guidance set. The Guidance Set consists of a Tail Kit, which contains the Inertial Navigation System (INS) and a Global Positioning System (GPS) receiver, a set of Aerosurfaces and an umbilical cover, which allows the JDAM to improve the accuracy of unguided, general purpose bombs. The Laser JDAM (LJDAM) adds the DSU-38/40 sensor, which gives the system a semi-active laser seeker. This allows the weapon to strike targets moving at up to 70 mph.

19. GBU-12/58 Paveway II (PW-II) 500-pound (GBU-12) and 250-pound (GBU-58) are maneuverable, free-fall, laser-guided bombs (LGBs) that guides to reflected laser energy from the desired target. Employment of the LGB is the same as a normal general purpose (GP) warhead, except the semi-active guidance corrects for employment errors

inherent in any delivery system. Laser designation for the weapon can be provided by a variety of laser target markers or designators from the air or ground. The Paveway system consists of a laser guidance kit, a computer control group (CCG), a warhead-specific Air Foil Group (AFG) that attach to the nose and tail of MK-81 and MK-82 General Purpose (GP) bombs, and a fuse. The weapon is primarily used for precision bombing against non-hardened targets.

a. The MAU-169 or the MAU-209 are the CCG for the GBU-12 and GBU-58.

b. The MXU-650 is the AFG for the 500-pound GBU-12.

c. MXU-1006/B is the AFG for the 250-pound GBU-58.

20. MK-82 Inert General Purpose (GP) bomb is a 500-pound, free-fall, unguided, low-drag inert weapon used for integration testing. There is no explosive fill.

21. MK-81 Inert GP bomb is a 250-pound inert training ordnance representative in size and weight of an explosive filled bomb to simulate either a free-fall 250-pound bomb or precision guided munition.

22. The Joint Programmable Fuse (JPF) FMU-139 is a multi-delay, multi-arm and proximity sensor compatible with general purpose blast, frag, and hardened-target penetrator weapons.

The JPF settings are cockpit selectable in flight when used numerous precision-guided weapons. It can interface with numerous weapons including GBU-12, GBU-58, GBU-54, and GBU-38.

23. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

24. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

25. A determination has been made that the Government of Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

26. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Australia.

[FR Doc. 2022-04473 Filed 3-2-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-0D]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697-9214.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21-0D with attached Policy Justification.

Dated: February 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

March 19, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 21-0D. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 20-66 of October 9, 2020.

Sincerely,

Heidi H. Grant
Director

Enclosures:

1. Transmittal

BILLING CODE 5001-06-C

Transmittal No. 21-0D

*REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)*

(i) *Purchaser:* Government of Finland
(ii) *Sec. 36(b)(1), AECA Transmittal
No.:* 20-66

Date: October 9, 2020.

Military Department: Air Force.

(iii) *Description:* On October 9, 2020, Congress was notified by Congressional certification transmittal number 20-66 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of sixty-four (64) F-35 Joint Strike

Fighter CTOL aircraft; sixty-six (66) Pratt & Whitney F-135 engines (64 installed and 2 spares); five hundred (500) GBU-53/B Small Diameter Bomb II (SDB II) All-Up Round (AUR); twelve (12) GBU-53/B SDB II Guided Test Vehicles (GTV); twelve (12) GBU-53/B SDB II Captive Carry Vehicles (CCV); one hundred fifty (150) Sidewinder AIM-9X Block II+ (Plus) Tactical Missiles; thirty-two (32) Sidewinder AIM-9X Block II+ (Plus) Captive Air Training Missiles (CATMs); thirty (30) AIM-9X Block II+ (Plus) Sidewinder Tactical Guidance Units; eight (8) AIM-9X Block II Sidewinder CATM Guidance Units; one hundred (100) AGM-154C-1 Joint Stand Off Weapon

(JSOW-C1) Tactical Missiles; two hundred (200) Joint Air-to-Surface Standoff Missile-Extended Range (JASSM-ER) AGM-158B-2 Missiles; two (2) AGM-158B-2 JASSM-ER Separation Test Vehicles; two (2) AGM-158B-2 JASSM-ER Instrumented Test Vehicles; two (2) AGM-158B-2 JASSM-ER Jettison Test Vehicles; two (2) AGM-158B-2 Inert JASSM w/Intelligent Telemetry Instrumentation Kits; two (2) AGM-158 Dummy Air Training Missiles; one hundred twenty (120) KMU-556 JDAM Guidance Kits for GBU-31; three hundred (300) FMU-139D/B Fuzes; two (2) KMU-556(D-2)/B Trainer JDAM Guidance Kits for GBU-31; thirty (30) KMU-557 JDAM

Guidance Kits for GBU-31; one hundred fifty (150) KMU-572 JDAM Guidance Kits for GBU-38/54; one hundred twenty (120) BLU-117, General Purpose Bombs; thirty-two (32) BLU-109, General Purpose Bomb; one hundred fifty (150) BLU-111, General Purpose Bomb; six (6) MK-82, Inert Bomb; one (1) FMU-139D/B (D-1) Inert Fuze. Also included were Electronic Warfare Systems; Command, Control, Communications, Computer and Intelligence/Communications, Navigational, and Identification (C4I/CNI); Autonomic Logistics Global Support System (ALGS); Operational Data Integrated Network (ODIN); Air System Training Devices; Weapons Employment Capability and other Subsystems, Features, and Capabilities; F-35 unique infrared flares; reprogramming center access; F-35 Performance Based Logistics; software development/integration; aircraft ferry and tanker support; Detector Laser DSU-38A/B, Detector Laser DSU-38A(D-2)/B, KMU-572(D-2)/B Trainer (JDAM), 40 inch Wing Release Lanyard; GBU-53/B SDB II Weapon Load Crew Trainers (WLCT); GBU-53/B SDB II Practical Explosive Ordnance Disposal System Trainers (PEST); AGM-154C-1 JSOW Captive Flight Vehicles; AGM-154C-1 JSOW Dummy Air Training Missiles; AGM-154C-1 JSOW mission planning, integration support and testing, munitions storage security and training, weapon operational flight program software development; integration of the Joint Strike Missile; weapons containers; aircraft and munitions support and test equipment; communications equipment; provisioning, spares and repair parts; weapons repair and return support; personnel training and training equipment; weapon systems software, publications and technical documents; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support. The estimated total cost was \$12.5 billion. Major Defense Equipment (MDE) constituted \$8.4 billion of this total.

(iv) This transmittal reports the inclusion of the following additional MDE items: Fifty (50) Sidewinder AIM-9X Block II+ (Plus) tactical missiles; six hundred (600) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM); up to twelve (12) AMRAAM Guidance Sections (spares); one thousand five hundred (1,500)

GBU-39 Small Diameter Bomb Increment 1 (SDB I) munitions; two (2) GBU-39 (T-1)/B inert practice bombs; three hundred (300) FMU-139D/B fuzes; twenty (20) KMU-557 JDAM Guidance Kits for GBU-31; two hundred seventy-five (275) KMU-572 JDAM Guidance Kits for GBU-38/54; twenty (20) BLU-109, general purpose bombs; and two hundred seventy-five (275) BLU-111, general purpose bombs. The following non-MDE items will also be included: AMRAAM Control Sections; AMRAAM Captive Air Training Missiles (CATMs); GBU-39 Tactical Training Rounds; containers; weapon system support equipment; support and test equipment; site surveys; spare and repair parts; repair and return support; publications and technical data; maintenance and aircrew training; and other related elements of logistics support.

The total cost of the new MDE articles is \$1.5 billion, and the total cost of the new non-MDE articles is \$80 million. The total notified cost of MDE will increase to \$9.9 billion, and the total notified case value will increase to \$14.08 billion.

(v) *Significance*: This notification is being provided to report the inclusion of MDE and non-MDE articles and services not previously notified. Their inclusion represents an increase in capability over what was originally notified. Finland requested the additional munitions as potential requirements for operational usage during the life of the proposed F-35 program.

(vi) *Justification*: This proposed sale will support the foreign policy and national security of the United States by improving the security of a trusted partner which is an important force for political stability and economic progress in Europe. It is vital to the U.S. national interest to assist Finland in developing and maintaining a strong and ready self-defense capability.

(vii) *Sensitivity of Technology*: The AIM-120C-8 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air-launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. The potential sale will include AMRAAM Guidance Sections. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. The AIM-120C-8 is a form, fit,

function refresh of the AIM-120C-7 and is the next generation to be produced.

The GBU-39 Small Diameter Bomb Increment 1 (SDB I) is a 250-pound GPS-aided inertial navigation system, small autonomous, day or night, adverse weather, conventional, air-to-ground precision glide weapon able to strike fixed and stationary re-locatable non-hardened targets from standoff ranges. It is intended to provide aircraft with an ability to carry a high number of bombs. Aircraft are able to carry four SDB I's in place of one 2,000-pound bomb. The SDB I GBU-39 (T-1)/B Inert Practice Bombs and GBU-39/B Tactical Training Round (TTR) are SDB I configurations with an inert fill used testing of the SDB I weapon system and flight training, respectively.

The Sensitivity of Technology Statement contained in the original notification applies to the other items reported here. The highest level of classification of information included in this potential sale is SECRET.

(viii) *Date Report Delivered to Congress*: March 19, 2021.

[FR Doc. 2022-04481 Filed 3-2-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-0E]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697-9214.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21-0E with attached Policy Justification.

Dated: February 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

April 21, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 21-0E. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 19-50 of August 20, 2019.

Sincerely,

Heidi H. Grant
Director

Enclosures:

1. Transmittal

BILLING CODE 5001-06-C

Transmittal No. 21-0E

**REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)**

(i) *Prospective Purchaser:* Taipei Cultural and Economic Representative Office (TECRO) in the United States.

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 19-50.

Date: August 20, 2019

Military Department: Air Force
Funding Source: National Funds

(iii) *Description:* On August 20, 2019, Congress was notified by Congressional certification transmittal number 19-50

of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of sixty-six (66) F-16C/D Block 70 aircraft; seventy-five (75) F110 General Electric Engines (includes 9 spares); seventy-five (75) Link-16 Systems (includes 9 spares); seventy-five (75) Improved Programmable Display Generators (iPDG) (includes 9 spares); seventy-five (75) APG-83 Active Electronically Scanned Array (AESA) Radars (includes 9 spares); seventy-five (75) Modular Mission Computers 7000AH (includes 9 spares); seventy-five (75) LN-260 Embedded GPS/INS (includes 9 spares); seventy-five (75) M61 Vulcan 20mm Guns (includes 9 spares); one-hundred thirty-eight (138)

LAU-129 Multipurpose Launchers; six (6) FMU-139D/B Fuze for Guided Bombs; six (6) FMU-139D/B Inert Fuze for Guided Bombs; six (6) FMU 152 Fuze for Guided Bombs; six (6) MK-82 Filled Inert Bombs for Guided Bombs; and three (3) KMU-572 Joint Direct Attack Munition (JDAM) Tail Kits, GBU-38/54. Also included are seventy-five (75) AN/ALE-47 Countermeasure Dispensers (includes 9 spares); one-hundred twenty (120) ALE-50 towed decoy or equivalent; seventy-five (75) APX-126 Advanced Identification Friend or Foe (includes 9 spares); seventy five (75) AN/ALQ-211 A(V)4 Airborne Integrated Defensive Electronic Warfare Suite (AIDEWS) or

equivalent (includes 9 spares); EW Line Replaceable Unit (LRU) and Standard Electronic Module (SEM) spares; one hundred fifty (150) ARC-238 radios (includes 18 spares); Secure Communications and Cryptographic Appliques including seventy-three (73) KIV-78 cryptographic COMSEC devices, and ten (10) AN/PYQ-10 Simple Key Loaders (SKLs) for COMSEC; three (3) Joint Mission Planning Systems (JMPS); twenty-seven (27) Joint Helmet Mounted Cueing Systems (JHMCS) II with Night Vision Device (NVD) compatibility or Scorpion Hybrid Optical-based Inertial Tracker (HObIT) helmet mounted cueing system with NVD compatibility; seventy (70) NVDs; six (6) NVD spare image intensifier tubes; Cartridge Actuated Devices/Propellant Actuated Devices (CAD/PAD); cartridges; chaff; flares; three (3) each DSU-38A/B Precision Laser Guidance Sensor (PLGS) for GBU-54 Laser Joint Direct Attack Munition (LJDAM) integration; PGU-28A/B 20mm ammunition; telemetry units for integration and test; bomb components; twenty (20) ground debriefing stations; Electronic Combat International Security Assistance Program (ECISAP) support including EW database and Mission Data File (MDF) development (classified/unclassified); communications equipment; classified/unclassified spares, repair, support equipment, test equipment, software delivery/support, personnel training, training equipment, flight/tactics manuals, publications and technical documentation; bomb racks; Organizational, Intermediate and Depot level tooling; Pilot Life Support Equipment (PLSE); Alternate Mission Equipment (AME); ground training devices (including flight and maintenance simulators); containers; development, integration, test and engineering, technical and logistical support of munitions; aircraft ferry; studies and surveys; construction services; U.S. Government and contractor engineering, technical and logistical support services; and other related elements of logistics, program and sustainment support. The estimated total cost was \$8.0 billion. Major Defense Equipment (MDE) constituted \$5.1 billion of this total.

This transmittal reports the addition of fifty-seven (57) Sniper Advanced Targeting Pods (ATPs) (AN/AAQ-33) (MDE). The following non-MDE items will also be included: Infrared Search and Track (IRST) pods (IRST International); IRST and Sniper ATP shipping containers; pylons; spare parts; repair and return; publications and technical documentation; software support; integration and test support; U.S. Government and Contractor engineering, technical and logistics support; and additional familiarization training. Additionally, this transmittal amends the original CN's reference to a specific electronic warfare system, to a successfully engineered and tested future Electronic Warfare (EW) Suite, integrated on the F-16V Block 70 aircraft. The total cost of the new MDE articles is \$154.33 million, and the total cost of the new non-MDE articles is \$307.52 million. The total notified cost of MDE will not increase, and the total notified case value will remain \$8.0 billion.

(iv) *Significance*: This notification is being provided as the additional MDE items were not enumerated in the original notification. Their inclusion represents an increase in capability over what was previously notified. As the recipient continues with its plans to develop its F-16 fleet, it has requested integration of IRST and Sniper capabilities. The proposed articles and services increases the recipient's capability to participate in Indo-Pacific region security operations and improves the recipient's credible defense capability.

(v) *Justification*: This proposed sale is consistent with U.S. law and policy as expressed in Public Law 96-8. This proposed sale serves U.S. national, economic, and security interests by supporting the recipient's continuing efforts to modernize its armed forces and to maintain a credible defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, economic and progress in the region.

(vi) *Sensitivity of Technology*: The Sniper ATP is an electro-optical targeting system housed in a single,

lightweight pod. It is the most widely fielded combat-tested targeting pod system employed today and handles the most challenging precision targeting and intelligence, surveillance and reconnaissance air-to-air and air-to-ground missions in the land, sea, and air domains.

The IRST is a type of sensor that can detect and track threats that have infrared signatures, at long ranges. It can act without emitting any radiation of its own and enables aircrews to detect adversaries, before those adversaries see or sense them.

The highest level of classification of information included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: April 21, 2021

[FR Doc. 2022-04482 Filed 3-2-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-41]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697-9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21-41 with attached Policy Justification and Sensitivity of Technology.

Dated: February 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

April 29, 2021

The Honorable Nancy Pelosi
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-41, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost \$259 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Heidi H. Grant
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001-06-C

Transmittal No. 21-41

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Australia

(ii) *Estimated Value*:

Major Defense Equipment * ..	\$211 million
Other	\$ 48 million

Total \$259 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):
 Four (4) CH-47F Cargo Helicopters with customer-unique modifications
 Eight (8) T55-GA-714A Aircraft Turbine Engines
 Five (5) AN/AAR-57 Common Missile Warning Systems (CMWS)

Eight (8) Embedded Global Positioning System (GPS)/Inertial Navigation Systems (INS/EGI) +429
 Two (2) EAGLE+429 Embedded Global Positioning System (GPS)/Inertial Navigation Systems (INS/EGI)

Non-MDE:

Also included is mission equipment; communication and navigation equipment; spare parts and components; special tools and test equipment; publications and technical manuals;

U.S. Government and contractor engineering, maintenance, technical, and logistical support services, and other related elements of program and logistical support.

(iv) *Military Department: Army (AT-B-ULZ)*

(v) *Prior Related Cases, if any: AT-B-UDK, AT-B-VAF*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to*

Congress: April 29, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—CH-47F Chinook Helicopters

The Government of Australia has requested to buy four (4) CH-47F cargo helicopters with customer-unique modifications; eight (8) T55-GA-714A aircraft turbine engines, five (5) AN/AAR-57 Common Missile Warning Systems (CMWS); eight (8) Embedded Global Positioning System (GPS)/Inertial Navigation Systems (INS/EGI)+429; and two (2) EAGLE+429 Embedded Global Positioning System (GPS)/Inertial Navigation Systems (INS/EGI). Also included is mission equipment; communication and navigation equipment; spare parts and components; special tools and test equipment; publications and technical manuals; U.S. Government and contractor engineering, maintenance, technical, and logistical support services, and other related elements of program and logistical support. The total estimated value is \$259 million.

This proposed sale will support the foreign policy and national security objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability.

The proposed sale of this equipment and support will improve Australia's capability to meet current and future threats, increase operational capabilities, strengthen its homeland defense and promote military cooperation.

The proposed sale of this equipment will not alter the basic military balance in the region.

These aircraft will be provided from U.S. Army stock. The purchaser

typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will not require the assignment of any additional U.S. or contractor representatives.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21-41

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The CH-47F is a twin engine heavy lift helicopter. The CH-47F has the Common Avionics Architecture System (CAAS) cockpit, which provides aircraft system, flight, mission, and communication management systems. The CAAS includes five multifunction displays (MFDs), two general purpose processor units (GPPUs), two control display units (CDUs) and two data concentrator units (DCUs). The Navigation System will have two Embedded GPS/INS (EGIs), two Digital Advanced Flight Control System (DAFCS), one ARN-149 Automatic Direction Finder, one ARN-147 VHF Omni Ranging/Instrument Landing System (VOR/ILS)/Marker Beacon (MB) System, one ARN-153 Tactical Air Navigation (TACAN) System, two air data computers, and one radar altimeter system. The communications suite consists of two each AN/ARC-231 Multi-mode radios providing VHF FM, VHF-AM, UHF, HQ II and DAMA SATCOM, and two each AN/ARC-201D SINCGARS radios. Also included is the AN/APXX-123A Identification Friend or Foe (IFF) system.

2. The AN/APX-123A Identify Friend-or-Foe (IFF) digital transponder set provides pertinent platform information in response to an IFF interrogator. The digital transponder provides cooperative Mark XII IFF capability using full diversity selection, as well as Mode Select (Mode S) capability. In addition, transponder operation provides interface capability with the aircraft's Traffic Collision and Avoidance System (TCAS). The transponder receives pulsed radio frequency interrogation signals in any of six modes (1, 2, 3/A, S, and 5), decodes the signals, and transmits a pulsed reply. The Mark XII IFF operation includes Selective Identification Feature (SIF) Modes 1, 2, 3/A and C, as well as

secure cryptographic Mode 5 operational capability.

3. The AN/ARC-231 Ultra High Frequency (UHF) radio is a software defined radio for military aircraft that provides two-way multi-mode voice and data communications. It provides joint service standard line of sight (LOS), HAVE QUICK, SATURN, and SINCGARS electronic counter-counter measures (ECCM), along with integrated waveform satellite communications (SATCOM).

4. The Embedded GPS/INS (EGI) unit CN-1689-(H-764GU) contains sensitive GPS technology. The EGI+429 and the obsolescence-fix version, the EAGLE+429 EGI, are self-contained, all-attitude navigation system providing outputs of linear and angular acceleration, linear and angular velocity, position, attitude (roll, pitch), platform azimuth, magnetic and true heading, altitude, body angular rates, time tags, and Universal Time Coordinated (UTC) synchronized time. The EGI+429 and EAGLE+429 EGI accepts Radio Frequency (RF) Global Positioning System (GPS) satellite transmissions, and provides these signals as inputs to the Embedded GPS Receiver (EGR). The EGR tracks up to twelve space vehicles (SV) signals simultaneously. The EGR supports the GPS and blended GPS/INS navigation solutions.

5. The AN/ARN-149, Automatic Direction Finder (ADF) Receiver, is a low frequency radio that provides automatic compass bearing on any radio signal within the frequency range of 100 to 2199.5 kHz as well as navigation where a commercial AM broadcast signal is the only available navigation aid.

6. The AN/ARN-153, Tactical Airborne Navigation (TACAN) System, is a full featured navigational system that supports four modes of operation: receive mode; transmit receive mode; air-to-air receive mode; and air-to-air transmit-receive mode. The TACAN provides a minimum 500-watt transmit capability with selecting range ratios of 30:1 or 4:1 which is accomplished through the automatic gain control (AGC) enable/disable switch, the 1553 bus, or the RNAV (ARINC) input bus.

7. The AN/ARN-147 Very High Frequency (VHF) Omni Ranging/Instrument Landing System receives input from ground navigation beacons and aids in aircraft navigation.

8. The AAR-57 Common Missile Warning System (CMWS) detects energy emitted by threat missile in-flight, evaluates potential false alarm emitters in the environment, declares validity of threat and selects appropriate counter-

measures for defeat. The CMWS consists of an Electronic Control Unit (ECU), Electro-Optic Missile Sensors (EOMSs), and Sequencer and Improved Countermeasures Dispenser (ICMD).

9. The AN/APR-39 Radar Warning Receiver Signal Detecting Set is a system that provides warning of a radar directed air defense threat and allows appropriate countermeasures. Included 1553 databus compatible configuration.

10. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

11. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

12. A determination has been made that the Government of Australia can

provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

13. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Australia.

[FR Doc. 2022-04475 Filed 3-2-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-30]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697-9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21-30 with attached Policy Justification and Sensitivity of Technology.

Dated: February 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

March 16, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-30 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Norway for defense articles and services estimated to cost \$36 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Heidi H. Grant
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001-06-C

Transmittal No. 21-30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Norway

(ii) *Total Estimated Value:*

Major Defense Equipment * .. \$30 million

Other	6 million
Total	\$36 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
One hundred twenty (120) Javelin FGM-148 Missiles
Two (2) Javelin FGM-148 Missiles Fly to Buy

Non-MDE:

Also included are twenty-four (24) Javelin Block 1 Command Launch Units (CLUs) retrofit kits; spare parts; publications and technical documentation; personnel training; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department: Army (NO-B-VKR)*

(v) *Prior Related Cases, if any: None*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to Congress: March 16, 2021*

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Norway—Javelin FGM-148 Missiles

The Government of Norway has requested to buy one hundred twenty (120) Javelin FGM-148 Missiles; and two (2) Javelin FGM-148 Missiles Fly to Buy. Also included are twenty-four (24) Javelin Block 1 Command Launch Units (CLUs) retrofit kits; spare parts; publications and technical documentation; personnel training; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support. The estimated total cost is \$36 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a NATO ally which is an important force for political stability and economic progress in Europe. Norway intends to use the requested armaments to upgrade and increase its current inventory of anti-tank missiles. These articles will be used in defense operations for both Norway and NATO-led operations.

The proposed sale will improve Norway's capability to meet current and future threats by improving Norway's anti-tank capability and continuing to enhance their surface-to-surface missile capability. This proposed sale will allow Norway to employ its armed forces more effectively in the ground domain and continue its defensive support of NATO's northern flank. Norway will have no difficulty absorbing these weapons into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Raytheon/Lockheed Martin Javelin Joint Venture of Orlando, Florida, and Tucson, Arizona. Any offset agreements will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will not require the assignment of any

additional U.S. Government or contractor representatives to Norway.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21-30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act Annex

Item No. vii

(vii) Sensitivity of Technology:

1. The Javelin Weapon System is a medium-range, man portable, shoulder-launched, fire and forget, anti-tank system for infantry, scouts, and combat engineers. It may also be mounted on a variety of platforms, including vehicles, aircraft and watercraft. The system weighs 49.5 pounds and has a maximum range in excess of 2,500 meters. The system is highly lethal against tanks and other systems with conventional and reactive armors. The system possesses a secondary capability against bunkers.

2. The key technical feature of the Javelin is the use of fire-and-forget technology, which allows the gunner to fire and immediately relocate or take cover. Additional special features are the top attack and/or direct fire modes, an advanced tandem warhead and imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. The Javelin missile also has a minimum smoke motor, thus decreasing its detection on the battlefield.

3. The Javelin Weapon System is comprised of two major tactical components, which are a reusable Command Launch Unit (CLU) and a round contained in a disposable launch tube assembly. The CLU incorporates an integrated day-night sight that provides a target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in a stand-alone mode for battlefield surveillance and target detection. The CLU's thermal sight is a second generation Forward Looking Infrared (FLIR) sensor. To facilitate initial loading and subsequent updating of software, all on-board missile software is uploaded via the CLU after mating and prior to launch.

4. The missile is autonomously guided to the target using an imaging infrared seeker and adaptive correlation tracking algorithms. This allows the gunner to take cover or reload and engage another target after firing a missile. The missile has an advanced tandem warhead and can be used in either the top attack or direct fire modes

(for target undercover). An onboard flight computer guides the missile to the selected target.

5. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that Norway can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Norway.

[FR Doc. 2022-04483 Filed 3-2-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-0B]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697-9214.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21-0B with attached Policy Justification.

Dated: February 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY
 201 12TH STREET SOUTH, SUITE 101
 ARLINGTON, VA 22202-5408

March 16, 2021

The Honorable Nancy Pelosi
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 21-0B. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 15-22 of April 28, 2015.

Sincerely,

Heidi H. Grant
 Director

Enclosures:

1. Transmittal

BILLING CODE 5001-06-C

Transmittal No. 21-0B

*REPORT OF ENHANCEMENT OR
 UPGRADE OF SENSITIVITY OF
 TECHNOLOGY OR CAPABILITY (SEC.
 36(B)(5)(C), AECA)*

(i) *Prospective Purchaser:* Government of Australia.

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 15-22.

Date: April 28, 2015

Military Department: Navy

(iii) *Description:* On April 28, 2015, Congress was notified by Congressional certification transmittal number 15-22 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act,

of follow-on sustainment support and services for twenty-four (24) AF/A-18Fs Super Hornet and twelve (12) AEA-18G Growler aircraft. The sustainment efforts included software and hardware updates; Engineering Change Proposals; System Configuration upgrades; system integration and testing; engine component improvement; tools and test equipment; spare and repair parts; support equipment; publications and technical documentation; personnel training and training equipment; aircrew trainer devices upgrades; U.S. Government and contractor technical assistance; and other related elements of logistics and program support. The estimated cost was \$1.5 billion. No

Major Defense Equipment (MDE) was purchased.

On September 12, 2019, Congress was notified by Congressional certification transmittal number 19-0L of Australia's request for additional sustainment and upgrades to the Australian F/A-18E/F fleet. The upgrades included up to twenty (20) AN/ASG-34(V) Infrared Search and Track (IRST) Block II systems; up to sixty (60) Distributed Targeting Processor—Networked (DTP-N) assets; and up to fifty-two (52) Multifunctional Information Distribution System Joint Tactical Radio Systems (MIDS JTRS) (6). The overall MDE value increased to \$260 million and the overall total value increased to \$1.81 billion.

This transmittal reports Australia's request for additional sustainment and upgrades to the Australian F/A-18F fleet. The upgrades include up to thirty-two (32) Multifunctional Information Distribution System Joint Tactical Radio System (MIDS JTRS) Upgrade Kits with Tactical Targeting Network Technology (TTNT); up to thirty-one (31) Distributed Targeting Processor—Networked (DTP-N) units; up to fifty-one (51) High Definition Video Recorders (HDVR); and up to fifty-three (53) AN/ARC-210 RT-2036 Radios. The sale also includes system integration and testing; software development; spares; support equipment; and government and contracting technical assistance. The overall MDE value will increase to \$292.5 million and the overall total value will increase to \$2 billion.

(iv) *Significance*: This proposed sale will allow Australia to effectively maintain its current force projection capability that enhances interoperability with U.S. forces well into the future.

(v) *Justification*: This proposed sale supports the foreign policy and national security objectives of the United States by improving the security of a Major Non-NATO Ally that is a key partner of the United States in ensuring peace and stability around the world.

(vi) *Sensitivity of Technology*: Multifunctional Information Distribution System Joint Tactical Radio System (MIDS JTRS) Upgrade Kits with Tactical Targeting Network Technology (TTNT) provides a high capacity, low

latency, internet Protocol (IP) based waveform that can quickly transmit large amounts of data. Advanced algorithms allow cooperative detection and engagement of a wider array of targets, improving fused track accuracy and increasing lethality/survivability through Situational Awareness.

Distributed Targeting Processor—Networked (DTP-N) is an upgrade to the Distributed Targeting System (DTS) providing internet Protocol (IP) to the F/A-18F, enabling connectivity to advanced tactical networks. The DTP-N upgrade provides the foundation for a majority of the future flight plan strike capabilities, which are related to improved targeting and networking.

DTP-N is networking hardware required for tactical use of IP based waveforms. This upgrade also provides Multi-Level Security (MLS) features, offering new capabilities to the platform through increased security assurances on data separation and data transfer.

AN/ARC-210 RT-2036 Radio is a single-channel, software-defined radio with multiple waveforms, high-speed mobile ad hoc networked communications, and beyond-line-of-sight connectivity for data, voice and imagery.

High Definition Video Recorders (HDVR) will replace the Upgraded Solid State Recorder (USSR) and Solid State Recorder (SSR), and provide cockpit video recording system commonality in Block I, Block II, and Block III F/A-18E, F/A-18F, and EA-18G aircraft. The HDVR provides Data at Rest (DAR)

protection and four times the storage capacity of SSR/USSR.

(vii) *Date Report Delivered to Congress*: March 16, 2021.

[FR Doc. 2022-04480 Filed 3-2-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-31]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697-9214.

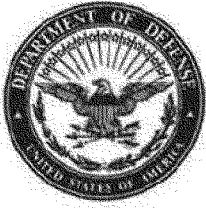
SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21-31 with attached Policy Justification and Sensitivity of Technology.

Dated: February 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

March 19, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-31 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost \$36 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Heidi H. Grant
Director

Enclosures:

- 1. Transmittal
- 2. Policy Justification
- 3. Sensitivity of Technology

BILLING CODE 5001-06-C

Transmittal No. 21-31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Republic of Korea

(ii) *Total Estimated Value:*

Major Defense Equipment *\$33 million
Other \$ 3 million

Total \$36 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
Two hundred eighty-eight (288) AGM-114R Hellfire Missiles

Non-MDE:

Also included are AGM-114R spare parts; U.S. Government and contractor engineering, technical, and logistics

support services; repair and return; storage; and other related elements of logistical and program support.

(iv) *Military Department:* Army (KS-B-ZIG)

(v) *Prior Related Cases, if any:* KS-B-ZHW

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold:
See Attached Annex

(viii) *Date Report Delivered to Congress:* March 19, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea—AGM-114R Hellfire Missiles

The Republic of Korea (ROK) has requested to buy two hundred eighty-eight (288) AGM-114R Hellfire missiles. Also included are AGM-114R spare parts; U.S. Government and contractor engineering, technical, and logistics support services; repair and return; storage; and other related elements of logistical and program support. The estimated total cost is \$36 million.

This proposed sale will support the foreign policy and national security objectives of the United States by meeting the legitimate security and defense needs of one of the closest allies in the INDOPACOM Theater. The ROK is one of the major political and economic powers in East Asia and the Western Pacific and a key partner of the United States in ensuring peace and stability in that region. It is vital to U.S. national interests to assist the ROK in developing and maintaining a strong and ready self-defense capability.

The ROK intends to use these Hellfire missiles to supplement its existing missile capability and current weapon inventory for its AH-64E aircraft. The proposed sale will improve the ROK's capability to meet current and future threats and ensure interoperability with other AGM-114R Hellfire missile users in the region. The Republic of Korea will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Corporation, Orlando, FL. The purchaser typically requests offsets. Any offset agreements will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Republic of Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21-31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AGM-114R is used against heavy and light armored targets, thin skinned vehicles, urban structures, bunkers, caves and personnel. The missile is Inertial Measurement Unit (IMU) based, with a variable delay fuse, improved safety and reliability.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the Republic of Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Republic of Korea.

[FR Doc. 2022-04498 Filed 3-2-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2021-SCC-0171]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Survey of Postgraduate Outcomes for the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement with change of a previously approved collection.

DATES: Interested persons are invited to submit comments on or before April 4, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection request by selecting "Department of Education" under "Currently Under Review," then check "Only Show ICR for Public Comment" checkbox. Comments may also be sent to ICDocketmgr@ed.gov.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Pamela Maimer, 202-453-6891.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey of Postgraduate Outcomes for the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Program.

OMB Control Number: 1840-0840.

Type of Review: A reinstatement with change of a previously approved collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 157.

Total Estimated Number of Annual Burden Hours: 40.

Abstract: The purpose of Section 102(b)(6) of the Mutual Educational and

Cultural Exchange Act of 1961 (Fulbright-Hays Act) is to promote and develop modern foreign language training and area studies throughout the educational structure of the United States. To help accomplish this objective, fellowships are awarded through U.S. institutions of higher education to American doctoral dissertation fellows enabling them to conduct overseas research and enhance their foreign language proficiency. Under the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) program, individual scholars apply through eligible institutions for an institutional grant to support the research fellowship. These institutions administer the program in cooperation with the U.S. Department of Education (US/ED). This information collection is the tool that can gather the information necessary to determine the performance of the fellows and the program. Since this collection is currently in a discontinued status, this collection package is a reinstatement with change.

Dated: February 28, 2022.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022-04500 Filed 3-2-22; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No. ED-2022-SCC-0028]

Agency Information Collection Activities; Comment Request; NCES System Clearance for Cognitive, Pilot, and Field Test Studies 2022-2025

AGENCY: Institute of Educational Science (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before May 2, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2022-SCC-0028. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail,

commercial delivery, or hand delivery. If the [regulations.gov](https://www.regulations.gov) site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance, Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202-8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202-245-6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: NCES System Clearance for Cognitive, Pilot, and Field Test Studies 2022-2025.

OMB Control Number: 1850-0803.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 600,000.

Total Estimated Number of Annual Burden Hours: 240,000.

Abstract: This is a request for a 3-year renewal of the generic clearance to allow the National Center for Education Statistics (NCES) to continue to develop, test, and improve its survey and assessment instruments and methodologies. The procedures utilized to this effect include but are not limited to experiments with levels of incentives for various types of survey operations, focus groups, cognitive laboratory activities, pilot testing, exploratory interviews, experiments with questionnaire design, and usability testing of electronic data collection instruments.

Dated: February 28, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022-04514 Filed 3-2-22; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities Program—Innovative Technology-Based Approaches for Assessing Children With Disabilities

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

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for Educational Technology, Media, and Materials for Individuals with Disabilities—Innovative Technology-Based Approaches for Assessing Children with Disabilities, Assistance Listing Number 84.327V. This notice relates to the approved information collection under OMB control number 1820-0028.

DATES:

Applications Available: March 3, 2022.

Deadline for Transmittal of Applications: May 2, 2022.

Deadline for Intergovernmental Review: July 1, 2022.

Pre-Application Webinar Information: No later than March 8, 2022, OSERS will post details on pre-recorded

informational webinars designed to provide technical assistance to interested applicants. Links to the webinars may be found at www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at www.federalregister.gov/d/2021-27979. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at <https://www2.ed.gov/about/offices/list/fofo/docs/unique-entity-identifier-transition-fact-sheet.pdf>.

FOR FURTHER INFORMATION CONTACT: Rebecca Sheffield, U.S. Department of Education, 400 Maryland Avenue SW, Room 5040E, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6725. Email: Rebecca.Sheffield@ed.gov.

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Educational Technology, Media, and Materials for Individuals with Disabilities Program (ETechM2 Program) is to improve results for students with disabilities by: (1) Promoting the development, demonstration, and use of technology; (2) supporting educational media activities designed to be of educational value in the classroom for students with disabilities; (3) providing support for captioning and video description that is appropriate for use in the classroom; and (4) providing accessible educational materials to students with disabilities in a timely manner.

Priority: This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674(b)(2) and 681(d) of the Individuals

with Disabilities Education Act (IDEA); 20 U.S.C. 1474(b)(2) and 1481(d)).

Absolute Priority: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Innovative Technology-Based Approaches for Assessing Children with Disabilities.

Background:

Assessment is an essential component of being able to provide a high-quality education and learning opportunities to infants, toddlers, children, and youth with disabilities (children with disabilities). It involves regularly collecting information to be able to make individualized decisions about the services and supports needed to promote a child's development, learning, and achievement. The COVID–19 pandemic caused a significant disruption to how children with disabilities were assessed and highlighted the need to leverage more equitable, innovative, reliable, and valid technology-based approaches for assessing children with disabilities.

Traditionally, most assessments are completed in-person by early intervention providers, teachers, and school-based clinicians. The pandemic required early intervention service providers and local educational agency (LEA) staff to utilize remote assessments and identify technology-based approaches to assess children with disabilities. While this was done with varied levels of success, the pandemic demonstrated that technology-based approaches to assessment have the potential to enhance both in-person and remote assessment processes.

Innovative technology-based approaches to assessment provide a number of benefits, including—

- Providing new sources of data on children's performance. For example, technology can expand opportunities to conduct authentic assessments and observations of children with disabilities in natural environments and in multiple settings, both in person and online, with greater involvement from families. This can allow teachers and service providers to prioritize different data when making decisions about necessary services and supports for a child with a disability.

- Enabling teachers and service providers to more efficiently collect, organize, and share data when monitoring children's performance and progress. This can lead to improved coordination, collaboration, and data-

driven decision-making among team members, which can enhance children's outcomes.

- Improving access to high-quality assessments for children with disabilities. Increased access can be particularly important in rural and remote areas to connect children with disabilities to specialists from professions experiencing critical shortages (e.g., functional vision and orientation and mobility assessments for children who are visually impaired or deafblind) (Landa-Vialard et al., 2018).

- Connecting English learners with disabilities to providers who speak their home languages, to ensure appropriate and individualized support for children's cultural and linguistic needs (Hoover, 2018).

- Providing additional flexibility and innovative strategies for children with disabilities who are homebound, hospitalized, migratory, and experiencing homelessness.

While there are many potential benefits to using technology-based assessment processes, there is limited knowledge of existing strategies and best practices for using technology to conduct assessments and deciding which types of technology-based approaches to use. Farmer et al. (2020) and Stifel et al. (2020) suggest that thorough analysis and guidance is necessary when using technical adaptations to assessments. Guidance is needed to support decision makers (i.e., school and program administrators, assessment administrators, teachers, and service providers) in examining the limitations of technology to ensure they maintain assessments' validity and reliability as well as meet legal requirements.

Additionally, it is important for decision makers to understand and track how technology-based approaches to assessment could inadvertently magnify cultural and socioeconomic disparities. Families and schools in high-need communities or in rural or remote areas may have less access to needed technology equipment, unreliable internet, or less comfort and experience using technology (Hanrahan et al., 2020).

Finally, for technology-based approaches to assessment to be equitable, they must be accessible to children with various disabilities who use various communication modes (e.g., students with deafness, autism, visual impairment including blindness). Teachers and service providers need training, support, and professional development to successfully implement technology-based approaches to assessment. Although personnel

preparation programs may include standards to address the application of assessment tools and measures, these programs do not necessarily address the knowledge and skills involved in using remote or virtual assessment formats (Jenkins & Walker, 2021).

The Department intends to fund two cooperative agreements to develop the knowledge base and disseminate information about technology-based approaches to assessment for children with disabilities. Through these agreements, the Department seeks to increase equitable access to high-quality assessment and build greater flexibility within assessment approaches, to respond to changing environments and technology.

Priority:

The purpose of this priority is to fund two cooperative agreements to establish and operate projects on Innovative Technology-Based Approaches for Assessing Children with Disabilities (projects). Projects must achieve, at a minimum, the following expected outcomes:

(a) Increased body of knowledge on equitable and innovative approaches for implementing and integrating technology into informal and formal assessments¹ to gather valid and reliable information on children's strengths and needs; developmental, academic, and functional skills; and learning progress to inform IFSPs and IEPs, eligibility determinations, instruction, and interventions.

(b) Increased awareness of existing and project-developed tools, methods, and frameworks to support informed, systematic decision-making for technology-based approaches to assessments by early intervention service providers, school districts, educators, and families.²

Focus Areas:

Within this absolute priority, the Secretary intends to support one project under each of the following focus areas: (A) Innovative Technology-Based Approaches for Assessing Infants, Toddlers, and Preschool-Age Children with Disabilities; and (B) Innovative

Technology-Based Approaches for Assessing School-Age Children with Disabilities.

Applicants must identify the specific focus area (*i.e.*, A or B) under which they are applying as part of the competition title on the application cover sheet (SF 424, line 12 and Abstract). Applicants that apply under both focus areas must submit an application for each focus area.

Focus Area A: Innovative Technology-Based Approaches for Assessing Infants, Toddlers, and Preschool-Age Children with Disabilities. A project in this focus area must develop the knowledge base and disseminate resources to support the effective use of technology-based approaches to assessments with infants, toddlers, and preschool-age children and their families referred to, or receiving, early intervention and early childhood special education services.

Focus Area B: Innovative Technology-Based Approaches for Assessing School-Age Children with Disabilities. A project in this focus area must develop the knowledge base and disseminate resources to support the effective use of technology-based approaches to assessments of school-age children referred to, or receiving, special education services.

Note: The Office of Special Education Programs (OSEP) may fund a high-quality application out of rank order to ensure that projects are funded in both focus areas.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the following application and administrative requirements in this priority:

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

(1) Address the need in the field for knowledge and decision-making frameworks to support the effective use of technology-based approaches to assessments of children with disabilities, including technology-based approaches to conduct assessments of children in hard-to-reach settings with limited access to technology, with users that may have difficulty engaging with technology, and for children requiring specialized assessments (*e.g.*, disability-specific assessments requiring specially trained assessors and assessments delivered in languages other than English). To meet this requirement the applicant must—

(i) Demonstrate knowledge of existing, and emerging trends in, technology-based approaches to assessment of children with disabilities;

(ii) Demonstrate knowledge of current educational and policy issues and national initiatives relating to technology-based approaches to assessments of children with disabilities; and

(iii) Demonstrate knowledge of the implementation supports that are needed to implement new technology-based approaches to assessment for children with disabilities (*e.g.*, personnel preparation and professional development, ongoing consultation and coaching, data systems, and administrative supports); and

(2) Develop the knowledge base to increase the capacity of local and State early intervention and special education systems to make informed decisions on technology-based approaches to assessment and indicate the importance of systems developing this capacity.

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

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

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

(ii) Ensure that services and products meet the needs of the intended recipients of the grant; and

(iii) Address the needs of children with disabilities who live in rural or remote³ areas and high-need communities who may experience barriers to assessment due to scarcity of qualified personnel or limitations in internet connectivity, and children from racially and ethnically diverse backgrounds, including those who are English learners;

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

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model⁴ by which the proposed project will

¹ For the purposes of this priority, "assessment" and "assessing" refer to formal and informal methods to collect individualized data on children's strengths and needs; developmental, academic, and functional skills; and learning progress to inform individualized family service plans (IFSPs) and individualized education programs (IEPs), eligibility determinations, instruction, and interventions. Program-wide or school-wide assessments, such as large-scale State and district wide assessments or universal screening, are not within the scope of this priority.

² Note: This priority does not support the development or validation of procedures for technology-based administration of published standardized assessment tools.

³ For the purposes of this priority, a "rural or remote" area or population is an area or population within one of the U.S. territories, freely associated States, or outlying areas or within a reservation, or that is served by a school district whose locale type is classified as rural according to 2019 or 2020 data from the National Center for Education Statistics locale classifications. Please see <https://nces.ed.gov/programs/imaped/LocaleLookup/>.

⁴ Logic model (34 CFR 77.1) (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.*, the active "ingredients" that are

achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

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

Note: The following website provides more information on logic models and conceptual frameworks:

www.osepideasthatwork.org/logicModel.

(4) Be based on current research and make use of evidence-based practices (EBPs).⁵ To meet this requirement, the applicant must describe—

(i) The current research on practices to support assessment of children with disabilities, technology-based approaches to assessment, and the use of technology to improve access to assessment;

(ii) The current research about adult learning principles and implementation science that will inform any proposed products; and

(iii) How the proposed project will incorporate current research and practices in the development and delivery of its products and services;

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

(i) How it proposes to identify and develop the knowledge base on—

(A) Current best practices and tools for implementing and integrating technology into informal and formal assessments to gather valid and reliable information on children's strengths and needs; developmental, academic, and functional skills; and learning progress, to inform IFSPs and IEPs, eligibility determinations, instruction, and interventions;

(B) Promising technology-based innovations and approaches to assessment, including practices and tools that could be used to gather valid and reliable information across a variety of settings and environments on

hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

⁵ For the purposes of this priority, "evidence-based practices" means practices that, at a minimum, demonstrate a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

children's strengths and needs; developmental, academic, and functional skills; and learning progress, to inform IFSPs and IEPs, eligibility determinations, instruction, and interventions. Promising innovations and approaches may involve how to—

(1) Design accessibility and support features for technology-based assessment;

(2) Individualize assessment strategies;

(3) Identify and address participation barriers; and

(4) Provide training and professional development to relevant stakeholders on innovative strategies for assessment and data-based decision-making;

(C) The strengths, limitations, and potential outcomes of existing and emerging technology-based assessment tools and methods in a range of forms and contexts (*e.g.*, early childhood settings, homes, virtual schools, traditional classrooms), and the available evidence for these strengths, limitations, and outcomes;

(D) Technology-based approaches that increase equity in the assessment of children with disabilities, including approaches to observing children and families; collecting valid and reliable child performance and progress data; and understanding and applying assessment findings to inform the development of culturally and linguistically appropriate IEPs and IFSPs;

(E) Practices and strategies to enhance the accessibility and equity of technology-based approaches to assessment for all children with disabilities, including strategies for users that may have difficulty engaging with technology; in settings with limited access; and for children requiring specialized assessments to promote equitable developmental, academic, and functional outcomes;

(F) Existing and emerging methods and approaches for preparation of personnel to select, implement, and act upon the results of technology-based assessments; and

(G) Implementation supports and system capacity that are needed to implement technology-based approaches to assessment, including supports for administrators and other systems-level decision-makers to develop policies and procedures for State and local agencies regarding the selection, procurement, implementation, and use of technology-based approaches to assessments;

(ii) How it proposes to develop, validate, and disseminate frameworks, based on research and identified promising practices, to support

informed and effective decision-making on the systematic implementation and use of technology-based approaches to assessment, for use by practitioners, administrators, and local and State agencies; and

(iii) Its proposed approach to universal, general TA,⁶ which must identify the intended recipients, including the type and number of recipients, that will receive the products and services, a description of the products and services that the project proposes to make available, and the expected impact of those products and services under this approach;

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

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

(ii) With whom the proposed project will collaborate, the process by which the project will collaborate with OSEP-funded projects and centers, and the intended outcomes of the collaboration. Projects must collaborate with the other project funded under this priority; and

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

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information to varied intended audiences, using a variety of dissemination strategies.

(c) In the narrative section of the application under "Quality of the project evaluation," include a detailed and complete description of the evaluation activities and measures to be incorporated into the proposed project's research plan and knowledge development activities. The description must include—

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

(2) A formative evaluation plan to address evaluation questions, consistent with the project's logic model, that includes sources of data, a timeline for

⁶ "Universal, general TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with project staff and including one-time, invited or offered conference presentations by project staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the project's website by independent users. Brief communications by project staff with recipients, either by telephone or email, are also considered universal, general TA.

data collection, analysis plans, and staff assignments for completing the plan. The plan must show how periodic review and feedback will be incorporated in the formative evaluation and used to improve the project during the performance period. These data will be reported in the annual performance report (APR). The plan also must outline how evaluation data will be reviewed by project staff, when they will be reviewed, and how they will be used during the course of the project to adjust the project's activities to increase and extend the usefulness and generalizability of the knowledge development activities; and

(3) A summative evaluation plan, including a timeline and staff assignments for completing the plan, to collect and analyze data on stakeholder awareness of resources and decision-making frameworks developed and disseminated by the project. The plan must show how the knowledge development activities will be used to inform stakeholder decision-making about technology-based assessment approaches for children with disabilities.

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

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

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

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

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

(e) Demonstrate, in the narrative section of the application under "Quality of the management plan," how—

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

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

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

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

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

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation. This must include how the proposed project will engage a technical work group (TWG) comprised of individuals with expertise in assessment of children with disabilities, including those from culturally and linguistically diverse backgrounds, and technology-based approaches to assessment to provide technical advice and engage with stakeholders throughout the project period.

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

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

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

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

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

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period. If the conference will be conducted virtually, projects will be notified that they need to reallocate funds for travel no later than the end of the third quarter of each budget period;

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

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

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

References:

Farmer, R.L., McGill, R.J., Dombrowski, S.C.,

Benson, N.F., Smith-Kellen, S., Lockwood, A.B., Powell, S., Pynn, C.P., & Stinnett, T.A. (2020). Conducting psychoeducational assessments during the COVID-19 crisis: The danger of good intentions. *Contemporary School Psychology, 25*, 27–32. <https://doi.org/10.1007/s40688-020-00293-x>.

Hanrahan, B.V., Ma, N.F., Betanzos, E., & Savage, S. (2020, June). Reciprocal research: Providing value in design research from the outset in the rural United States. *ICTD2020: Proceedings of the 2020 International Conference on Information and Communications Technologies and Development*, (31) 1–5. <https://doi.org/10.1145/3392561.3397585>.

Hoover, J.J., Erickson, J.R., Herron, S.R., & Smith, C.E. (2018). Implementing culturally and linguistically responsive special education eligibility assessment in rural county elementary schools: Pilot project. *Rural Special Education Quarterly, 37*(2), 90–102. <https://doi.org/10.1177/8756870518761879>.

Jenkins, M., & Walker, J.D. (2021, Spring). COVID-19 practices in special education: Stakeholder perceptions for teacher preparation. *Teacher Educators' Journal, 14*, 83–105. <https://files.eric.ed.gov/fulltext/EJ1296277.pdf>.

Landa-Vialard, O., Ely, M.S., & Lartz, M.N. (2018). Early learning visual impairment services training and advancement (EL VISTA) project: Leading the way for a new profession within a profession. *Journal of Visual Impairment & Blindness, 112*(1), 103–112. <https://doi.org/10.1177/0145482X1811200110>.

Stifel, S.W., Feinberg, D.K., Zhang, Y., Chan, M.-K., & Wagle, R. (2020). Assessment during the COVID-19 pandemic: Ethical, legal, and safety considerations moving forward. *School Psychology Review, 49*(4), 438–452. <https://doi.org/10.1080/2372966X.2020.1844549>.

Waiver of Proposed Rulemaking:

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

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

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR

part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: The Administration has requested \$29,547,000 for the Educational Technology, Media, and Materials for Individuals with Disabilities program for FY 2022, of which we intend to use an estimated \$1,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2023 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding \$500,000 for a single budget period of 12 months.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs); State lead agencies under Part C of the IDEA; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www2.ed.gov/about/offices/list/ocfo/intro.html.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be

reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. Other General Requirements:

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. Application Submission

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at www.federalregister.gov/d/2021-27979, which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at <https://www2.ed.gov/about/offices/list/ocfo/docs/unique-entity-identifier-transition-fact-sheet.pdf>.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your

application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.

- Use a font that is 12 point or larger.

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

(a) *Significance (15 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(iii) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(b) *Quality of the project design (35 points).*

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(iii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(iv) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(v) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(c) *Adequacy of resources and quality of the management plan (30 points).*

(1) The Secretary considers the adequacy of resources and the quality of the management plan for the proposed project.

(2) In determining the adequacy of resources and the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(v) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(vi) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(d) *Quality of the project evaluation (20 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected

for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all

applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works.

Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

5. *Performance Measures:* For purposes of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the ETechM2 Program. These measures are:

- *Program Performance Measure 1:* The percentage of ETechM2 Program products and services judged to be of high quality by an independent review panel of experts qualified to review the substantial content of the products and services.

- *Program Performance Measure 2:* The percentage of ETechM2 Program products and services judged to be of high relevance to improving outcomes for infants, toddlers, children, and youth with disabilities.

- *Program Performance Measure 3:* The percentage of ETechM2 Program products and services judged to be useful in improving results for infants, toddlers, children, and youth with disabilities.

- *Program Performance Measure 4.1:* The Federal cost per unit of accessible educational materials funded by the ETechM2 Program.

- *Program Performance Measure 4.2:* The Federal cost per unit of accessible

educational materials from the National Instructional Materials Accessibility Center funded by the ETechM2 Program.

- *Program Performance Measure 4.3:* The Federal cost per unit of video description funded by the ETechM2 Program.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the project meet needs identified by stakeholders and may require the project to report on such alignment in its annual and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the

Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Katherine Neas,

Deputy Assistant Secretary. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2022-04420 Filed 3-2-22; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—National Center for Development and Dissemination of Digital Open Educational Resources That Translate Research To Practice for Building the Capacity of Personnel Serving Students With Disabilities

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

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for the National Center for Development and Dissemination of Digital Open Educational Resources that Translate Research to Practice for Building the Capacity of Personnel Serving Students with Disabilities, Assistance Listing Number 84.325E. This notice relates to the approved information collection under OMB control number 1820-0028.

DATES:

Applications Available: March 3, 2022.

Deadline for Transmittal of Applications: May 2, 2022.

Deadline for Intergovernmental Review: July 1, 2022.

Pre-Application Webinar Information: No later than March 8, 2022, the Office of Special Education and Rehabilitative Services will post details on pre-recorded informational webinars

designed to provide technical assistance (TA) to interested applicants. Links to the webinars may be found at www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at www.federalregister.gov/d/2021-27979. Please note that these Common Instructions superseded the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at <https://www2.ed.gov/about/offices/list/office/docs/unique-entity-identifier-transition-fact-sheet.pdf>.

FOR FURTHER INFORMATION CONTACT:

Sarah Allen, U.S. Department of Education, 400 Maryland Avenue SW, Room 5160, Potomac Center Plaza, Washington, DC 20202-5076. Telephone: (202) 245-7875. Email: Sarah.Allen@ed.gov.

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for personnel preparation in special education, early intervention, related services, and regular education to work with children, including infants and toddlers, with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research and experience, to be successful in serving those children.

Priority: This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1462 and 1481).

Absolute Priority: For FY 2022 and any subsequent year in which we make awards from the list of unfunded

applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

National Center for the Development and Dissemination of Digital Open Educational Resources that Translate Research to Practice for Building the Capacity of Personnel Serving Students with Disabilities (Center).

Background: Well-prepared, culturally and linguistically responsive, and committed special education personnel are vital to improving developmental and learning outcomes (e.g., social, emotional, behavioral, and academic) for all students, especially students with disabilities (Darling-Hammond et al., 2020). The Nation faces continued chronic shortages in the education workforce, especially special education personnel, and these shortages have been exacerbated by the COVID-19 pandemic (Billingsley & Bettini, 2019; Gecker, 2021; Mason-Williams et al., 2020). Between 2009 and 2014, enrollment in higher education programs preparing personnel declined more than 30 percent (Espinoza et al., 2018). Schools and districts report increasing difficulty hiring personnel, especially personnel for special education and related services positions. As a result, many States lowered academic requirements to enter teacher preparation programs and are hiring personnel under emergency certifications (Putman & Walsh, 2021). The most effective way to ensure the use of evidence-based practices (EBPs) with cultural and linguistic competence by personnel serving students with disabilities is by (a) improving the quality of preparation programs through the incorporation of EBPs with cultural and linguistic competence into their program of study, and (b) providing ongoing professional development for the practicing workforce to ensure they have the knowledge and skills to use the most up to date EBPs (CEEDAR Center and Center for Great Teachers and Leaders, 2020).

Despite the gains made in identifying EBPs, use of those practices in delivery of instruction and interventions for students with disabilities continues to lag (Cook et al., 2021; Cook & Odom, 2021). Given the importance of EBPs in supporting students' growth and improving outcomes, it is critical that personnel serving students with disabilities have the updated knowledge and skills to choose and use these effective practices.

To ensure that personnel serving students with disabilities have the

knowledge and skills to use EBPs effectively, States, districts, schools, and institutions of higher education (IHEs) must implement effective personnel development practices in both preparation programs and professional learning opportunities supporting growth for the current education workforce. Resources that may be used within such programs or stand-alone training are needed to support personalized professional learning for those seeking to advance their knowledge and skills. Further, both preparation programs and professional learning opportunities must be designed with a clear focus on course and curricular content that (a) translates research to practice by first building knowledge and understanding and then linking to meaningful applied learning experiences; (b) incorporates active learning with adult-learning principles; (c) connects learning to real-world settings; and (d) provides opportunities for modeling, coaching, and feedback (Darling-Hammond et al., 2017).

To advance educational equity in the use of EBPs with cultural and linguistic competence, preparatory programs and professional learning opportunities must also support multiple pathways into the profession, and support personnel development over a lifetime of learning and working, for individuals from diverse backgrounds (Darling-Hammond et al., 2017). In addition to traditional career pathways, some may enter the education workforce under provisional or alternate certification as career changers or after returning from military service. Others who are working as paraprofessionals may continue their education at a community college and then a four-year institution, with a pipeline program that leads to completion of the degree requirements needed for certification. Regardless of how one pursues full certification, all pathways that support traditionally underserved populations in obtaining meaningful and rewarding work within the education workforce need to be solidly grounded in the use of EBPs with cultural and linguistic competence.

Even before the onset of the COVID-19 pandemic, digital teaching and learning tools were playing an increasingly important role in preparation programs and professional learning opportunities for personnel serving and supporting students with disabilities (Pelletier et al., 2021). Digital learning tools can facilitate interactive preparation and professional learning environments and support learner variability. Mixed reality classroom simulators are expanding

opportunities for teaching and learning in IHE courses from a focus on constructing knowledge and understanding to building skills by providing practice opportunities in simulated classrooms. New learning management platforms are being used to support the development, organization, and delivery of high-quality teaching and learning, and allow both personalized and competency-based learning and monitoring performance across individuals and groups. Other platforms continue to expand the use of microcredentials, badging, and other forms of credit for professional growth and meeting continuing education requirements. Evidence-based professional development is needed to support faculty and professional development providers to identify and use these tools to enhance teaching and learning in personnel preparation programs and professional learning opportunities.

With hybrid education expected to grow in importance and relevance, the need and demand for high-quality digital teaching and learning content, products, and services that build the capacity of personnel to use EBPs also continues to grow. In addition, there is increased demand for using virtual environments and paradigms to enhance personnel preparation programs and professional learning opportunities. Likewise, the need to support IHE faculty, and State and local professional development providers in learning to use these resources to design and deliver effective courses and plan comprehensive curricula or programs has grown and expanded.

This absolute priority will advance the Secretary's priorities in the areas of addressing the impact of COVID-19 on students, educators, and faculty and supporting a diverse educator workforce and professional growth to strengthen student learning.

Priority: The purpose of this priority is to fund a cooperative agreement to establish and operate a national center that will develop and disseminate digital, open educational resources (OER)¹ that translate research to practice for use in building the capacity of special education personnel² to use

¹ Open Educational Resources are teaching and learning materials that you may freely use and reuse at no cost.

² For the purpose of this priority, "special education personnel" include general and special education teachers, related service providers, and educational administrators of systems that provide services to children and youth with disabilities and their families. Also included may be faculty, policy makers, and others indirectly supporting delivery of services and support for students with disabilities.

EBPs³ with cultural and linguistic competence to improve results for students with disabilities. In addition, the Center will disseminate resources to (a) faculty who prepare special education personnel, including future faculty; (b) State, local, and other professional development providers; and (c) individuals independently seeking to use the Center's resources to design and deliver effective course and curriculum content needed to support the preparation and professional learning in use of EBPs with cultural and linguistic competence to deliver instruction, interventions, and services for students with disabilities and their families, including those from underserved populations.

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

(a) Development and dissemination of innovative accessible digital OER that translate research to practice for use in building the capacity of special education personnel to use EBPs with cultural and linguistic competence to improve results for students with disabilities including those from underserved populations;

(b) Products and services that include knowledge-based teaching and learning tools, skill-building exercises, and connections to real-world or simulated practice opportunities aligned to professional standards;

(c) Resources developed by the Center that are licensed through an open-access licensing authority;

(d) Resources developed by the Center that are responsive to learners from varied backgrounds (e.g., race, ethnicity, disability, primary language) and education levels (e.g., bachelor's, doctoral); and as needed, may be differentiated by role (e.g., teacher, provider, administrator) and used across certification pathways and professional development opportunities;

(e) Increased capacity of faculty and IHEs with personnel preparation programs⁴ to build knowledge and skills of special education personnel to use EBPs with cultural and linguistic competence to strengthen learning and improve results for students with disabilities by using the Center's

³ For the purposes of this priority, "evidence-based practices" means practices that, at a minimum, demonstrate a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

⁴ For the purpose of this priority, "personnel preparation programs" include associate, bachelor's, master's, educational specialist, and doctoral programs that prepare personnel serving students with disabilities.

resources to enhance course and curricula content;

(f) Increased capacity of State educational agencies (SEAs), local educational agencies (LEAs), and other providers supporting professional growth of current special education personnel in the use of EBPs with cultural and linguistic competence by using Center products to enhance course and curricula content; offer multiple comprehensive and evidence-based certification pathways and professional development opportunities; and track progress, verify learning across individuals or groups, and assign credit needed to meet continuing education requirements for personnel serving students with disabilities; and

(g) Partnerships or agreements that support dissemination and use of the Center's products in personnel preparation programs and professional learning opportunities, and services to yield verification of learning or forms of credit needed to demonstrate professional growth and meet continuing education requirements for personnel serving students with disabilities.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

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

(1) Address current and emerging needs for instructional and intervention resources that translate research to practice for use in building the knowledge and skills of special education personnel to use EBPs with cultural and linguistic competence to improve results for students with disabilities, including those from underserved populations. To meet this requirement, the applicant must—

(i) Demonstrate knowledge of the need for special education personnel to have the knowledge and skills to identify and use EBPs with cultural and linguistic competence to improve outcomes for students with disabilities and knowledge of the challenges that faculty and IHEs offering personnel preparation programs, and SEAs, LEAs, and others offering professional learning opportunities, face in building the capacity of personnel;

(ii) Demonstrate knowledge of the need for high-quality, innovative, interactive OER that translate research to practice for enhancing courses and curricula content offered by IHEs, SEAs, LEAs, and other providers building the

capacity of personnel to use EBPs with cultural and linguistic competence to deliver instruction, interventions, and services for students with disabilities and their families; and

(iii) Demonstrate knowledge of the current and emerging content, pedagogy, and instructional needs of learners differentiated by roles (*e.g.*, teacher, service provider, administrator); credentials (*e.g.*, uncertified or certified, across degree levels); backgrounds (*e.g.*, education professional, career changer, race, and ethnicity); program type (*e.g.*, higher education preparation program and professional learning opportunities); and expertise in developing and delivering instructional and intervention resources to build capacity of personnel to use EBPs with cultural and linguistic competence in delivering instruction, interventions, and services for students with disabilities and their families;

(2) Address the current and emerging needs for innovative, state-of-the-art educational technologies for use in personnel preparation programs and professional learning opportunities seeking to optimize course and curriculum content in programs designed to build the capacity of personnel to deliver evidence-based instruction, interventions, and services with cultural and linguistic competence for students with disabilities and their families. To address this requirement, the applicant must—

(i) Demonstrate knowledge of the need for innovative and promising educational technologies to enhance instruction and learning, and provide verification of learning of course and curriculum content, and expertise integrating these technologies in products and services designed to support preparation and professional learning opportunities of special education personnel;

(ii) Demonstrate knowledge of, and expertise in, effective dissemination of digital, OER addressing the use of EBPs with cultural and linguistic competence to IHEs, SEAs, LEAs, and other personnel development programs, including data demonstrating quality and use of those resources; and

(iii) Demonstrate knowledge of, and expertise in, building the capacity of IHE faculty (including future faculty) and personnel development providers to use digital OER in courses and curricula of personnel preparation programs and professional learning opportunities with consideration of learners differentiated by roles (*e.g.*, teacher, provider, administrator); credentials (*e.g.*, uncertified or certified, across degree

levels); backgrounds (*e.g.*, education professional, career changer, race, and ethnicity); and program type (*e.g.*, higher education preparation program, continuing professional development).

(b) Demonstrate, in the narrative section of the application under "Quality of Project Services," how the proposed project will—

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

(i) Identify the needs of the intended recipients, including both those learning to use EBPs with cultural and linguistic competence (*e.g.*, special education personnel and scholars enrolled in preparation programs), and those who will use the Center's resources to design and deliver effective course and curriculum content needed to support the preparation (*e.g.*, faculty, future faculty), or professional learning opportunities for special education personnel (*e.g.*, SEAs, LEAs, other professional development providers) to use EBPs with cultural and linguistic competence to deliver instruction, interventions, and services for students with disabilities and their families; and

(ii) Ensure that services and products meet the needs of the intended recipients of the grant;

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

(i) Measurable intended project outcomes consistent with the intended outcomes specified in this notice; and

(ii) In Appendix A, the logic model⁵ by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

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

Note: The following websites provide more information on logic models and

⁵ Logic model (34 CFR 77.1) (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.*, the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

conceptual frameworks; www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework; <https://osepideasthatwork.org/evaluation?tab=eval-logic>; and https://ies.ed.gov/ncee/edlabs/regions/central/pdf/REL_2021112.pdf.

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

(i) The current research on special education personnel's use of EBPs with cultural and linguistic competence in the delivery of instruction, interventions, and services that strengthen learning and improve outcomes for students with disabilities;

(ii) The current research on the use of innovative and promising interactive educational technologies to enhance instruction and learning, and provide verification of learning in course and curricula content of personnel preparation programs and professional learning opportunities that require demonstrated knowledge, skills, and practice in real-world or simulated settings; and

(iii) The current research about adult learning principles and implementation science that will inform the proposed product development, dissemination, and TA to IHEs, SEAs, LEAs, and other professional development providers; and

(iv) How the proposed project will incorporate current research and practices in the development and delivery of its products and services;

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

(i) How it proposes to identify or develop:

(A) Innovative, accessible digital OER that translate research to practice for use in building the capacity of special education personnel to implement EBPs with cultural and linguistic competence to improve results for students with disabilities;

(B) Existing products from the Office of Special Education Program's (OSEP's) prior investment for updating, to reflect current research, policy, product design, and delivery features;

(C) Products grounded in adult-learning principles and use of interactive educational technologies to enhance instruction and learning, provide verification of knowledge-based learning, provide skill-building

exercises, and connect to real-world or simulated practice opportunities aligned to professional standards;

(D) Products that are responsive to the needs of learners from varied backgrounds (e.g., race, ethnicity, disability, primary language); education levels (e.g., bachelor's, doctoral); and, as needed, may be differentiated by role (e.g., teacher, provider, administrator) and used within personnel preparation, professional development, or by individuals for personalized learning;

(E) A framework and tools for identifying, implementing, and sustaining use of Center products within special education personnel preparation programs and for professional learning opportunities, to enhance the curriculum and support special education personnel; and

(F) A comprehensive communication plan to support dissemination of, and outreach related to, the Center's library of products and services. The framework should address the (a) target audiences; (b) context in which communication will occur; (c) purpose or intended outcomes of the communications (e.g., inform, increase use); and (d) use of media, including social media; and also include metrics to document effectiveness and reach;

(ii) Its proposed approach to universal, general TA,⁶ which must identify the intended recipients, including the type and number of recipients, that will receive the products and services, a description of the products and services that the project proposes to make available, and the expected impact of those products and services under this approach. At minimum, the approach should include activities focused on—

(A) Identifying, developing, and disseminating products, materials, and tools to increase awareness of the importance and benefits of using EBPs with cultural and linguistic competence to strengthen student learning and improve outcomes for students with disabilities, including students with disabilities who have high-intensity needs and from underserved populations; and

(B) Identifying, developing, and disseminating products that translate

research to practice for use in building the capacity of special education personnel to use EBPs with cultural and linguistic competence to improve results for students with disabilities, including students with disabilities who have high-intensity needs and those from underserved populations; and

(C) Identifying, developing, and disseminating products, materials, and tools to help IHEs, SEAs, LEAs, and other professional development providers use the Center's products or services to enhance and expand coverage of EBPs with cultural and linguistic competence in course and curriculum content of personnel preparation programs and professional development opportunities for those who serve students with disabilities;

(iii) Its proposed approach to targeted, specialized TA,⁷ which must identify—

(A) Its proposed approach for identifying and establishing partnerships or agreements with ethnically and culturally diverse faculty and IHEs supporting different levels of preparation (associate, bachelor's, master's, educational specialist, and doctoral levels) to support use of Center products in course and curricula content;

(B) Its proposed approach for identifying and establishing partnerships or agreements with SEAs, LEAs (especially high-need LEAs⁸) and other professional development providers to support use of Center products in course and curriculum content of programs supporting professional learning opportunities for current special education personnel;

(C) The Center's services to track progress, verify learning across individuals or groups, and assign credit needed to meet continuing education requirements for personnel serving students with disabilities;

(D) Its proposed approach for establishing partnerships or agreements that support dissemination and use of

⁷ "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

⁸ For the purposes of this priority, "high-need LEA" means an LEA (a) that serves not fewer than 10,000 children from families with income below the poverty line; or (b) for which not less than 20 percent of the children are from families with income below the poverty line.

⁶ "Universal, general TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited, or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

the Center's resources in personnel preparation programs, and for professional learning opportunities to enhance teaching and learning, yield verification of learning, or forms of verification needed to demonstrate professional growth and meet continuing education requirements for personnel serving students with disabilities;

(E) Its proposed approach for collaborating with partners, including OSEP-funded TA centers, to increase use of EBPs with cultural and linguistic competence by special education personnel and build capacity for use of the Center's products in training and TA, and support alignment in resources across centers; and

(F) Its proposed approach for identifying and partnering with OSEP-funded grantees with Personnel Development to Improve Services and Results for Children With Disabilities Program projects to build the capacity of scholars, including future faculty, to use the Center's products in personnel preparation programs and to deliver professional learning opportunities.

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

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

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

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

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

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.⁹ The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These

questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of this notice;

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

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

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

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

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

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

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

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

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

(e) Demonstrate, in the narrative section of the application under "Quality of the management plan," how—

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

requirement, the applicant must describe—

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

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

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

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

(4) The proposed project will benefit from a diversity of perspectives, including those of families, including those who are racially and ethnically diverse; faculty; special education personnel; TA providers; researchers; and policy makers, among others, in its development and operation.

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

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

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

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

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

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

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

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

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later

⁹ A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

than the end of the third quarter of each budget period;

(4) Engage doctoral scholars or post-doctoral fellows in the project to deepen the knowledge, skills, competencies, and dispositions that future leaders in the field need to increase the special education workforce, ensure special education preparation programs are preparing scholars with the knowledge and skills to use EBPs with cultural and linguistic competence; translate research to practice; deliver professional learning opportunities; and provide TA;

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

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

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

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

(a) The recommendations of a 3+2 review team consisting of experts with knowledge of, and experience in, providing TA for building the capacity of special education personnel to improve results for students with disabilities. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

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

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

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

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Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

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

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested \$90,200,000 for the Personnel Development To Improve Services and Results for Children With Disabilities program for FY 2022, of which we intend to use an estimated \$1,200,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2023 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding \$1,200,000 for a single budget period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants*: SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2.a. *Cost Sharing or Matching*: This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information*: This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www2.ed.gov/about/offices/list/ocfo/intro.html.

c. *Administrative Cost Limitation*: This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees*: A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. Other General Requirements:

a. Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

b. Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. Application Submission

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at www.federalregister.gov/d/2021-27979, which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13,

2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at <https://www2.ed.gov/about/offices/list/ocfo/docs/unique-entity-identifier-transition-sheet.pdf>.

2. *Intergovernmental Review*: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit*: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.

- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria*: The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

- (a) *Significance (10 points)*.
- (1) The Secretary considers the significance of the proposed project.
- (2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project services (35 points)*.

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(c) *Quality of the project evaluation (20 points)*.

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(iv) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or

beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not

fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure

information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities program. These measures are:

- *Program Performance Measure 1:* The percentage of Technical Assistance and Dissemination products and services deemed to be of high quality by an independent review panel of experts qualified to review the substantive content of the products and services.

- *Program Performance Measure 2:* The percentage of Special Education Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be of high relevance to special education personnel preparation and professional development, or practice.

- *Program Performance Measure 3:* The percentage of all Special Education Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be useful in improving special education personnel preparation and professional development, or practice.

- *Program Performance Measure 4:* The cost efficiency of the Technical Assistance and Dissemination Program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.

- *Long-term Program Performance Measure:* The percentage of States receiving Special Education Technical Assistance and Dissemination services regarding scientifically or evidence-based practices for children, and youth with disabilities that successfully promote the implementation of those practices in school districts, and service agencies.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final

performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the Center meet needs identified by stakeholders and may require the Center to report on such alignment in their annual and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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

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

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

your search to documents published by the Department.

Katherine Neas,

Deputy Assistant Secretary, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2022-04422 Filed 3-2-22; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No. ED-2021-SCC-0156]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; School Pulse Panel Data Collection

AGENCY: Institute of Educational Science (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before April 4, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection request by selecting "Department of Education" under "Currently Under Review," then check "Only Show ICR for Public Comment" checkbox. Comments may also be sent to ICDocketmgr@ed.gov.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202-245-6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the

following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: School Pulse Panel Data Collection.

OMB Control Number: 1850-NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 17,280.

Total Estimated Number of Annual Burden Hours: 4,752.

Abstract: The School Pulse Panel (SPP) is a new data collection originally designed to collect voluntary responses from a nationally representative sample of public schools to better understand how schools, students, and educators are responding to the ongoing stressors of the coronavirus pandemic. Due to the immediate need to collect information from schools during the pandemic to satisfy the requirement of Executive Order 14000, an emergency clearance (OMB #1850-0963) was issued to develop and field the first several monthly collections of the SPP. This submission is seeking a request for a full review of the SPP data collection under the traditional clearance review process.

The School Pulse Panel is conducted by the National Center for Education Statistics (NCES), part of the Institute of Education Sciences (IES), within the United States Department of Education. The purpose of the study is to collect extensive data on issues concerning the impact of the COVID-19 pandemic on students and staff in U.S. public primary, middle, high, and combined-grade schools. The survey asks school staff about a wide range of topics, including but not limited to instructional mode offered; enrollment counts of subgroups of students using various instructional modes; strategies to address pandemic-related learning needs; safe and healthy school mitigation strategies; mental health services; use of technology; information on staffing, nutrition services, principal/parental/student/staff concerns, absenteeism, and overall principal experiences. It is planned that some new content will be rotated in (and

some rotated out) monthly. This package includes items that were fielded as part of the January, February, and March collections, as well as proposed new content to be collected in April, May, and June. Subsequent new content area additions (estimated to take place on a quarterly basis) will take place as revisions with 30-day public comment periods for each subsequent quarterly collection and may be followed by change requests to further refine items for each month.

The administration of the School Pulse Panel study is in direct response to President Biden's Executive Order 14000: Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers. It is one of the nation's few sources of reliable data on a wealth of information focused on school reopening efforts, virus spread mitigation strategies, services offered for students and staff, and technology use, as reported by school principals and other staff in U.S. public schools. About 2,400 (1,200 in an initial sample and 1,200 in a reserve sample) public elementary, middle, high, and combined-grade schools have been initially selected to participate in a panel where school staff will be asked to provide requested data monthly during the 2021-22 school years. This approach provides the ability to collect detailed information on various topics while also assessing changes in reopening efforts over time. Given the high demand for data collection during this time, the content of the survey will likely change monthly.

Dated: February 28, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022-04515 Filed 3-2-22; 8:45 am]

BILLING CODE 4000-01-P

ELECTION ASSISTANCE COMMISSION

2022 Election Administration and Voting Survey; Survey and Submission to OMB of Proposed Collection of Information

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice; request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the EAC announces an information collection and seeks public comment on the provisions thereof. The EAC intends to submit this proposed information

collection (2022 Election Administration and Voting Survey, or EAVS) to the Director of the Office of Management and Budget for approval. The 2022 EAVS asks election officials questions concerning voting and election administration, including the following topics: Voter registration; overseas and military voting; voting by mail; early in-person voting; polling operations; provisional voting; voter participation; election technology; election policy; and other related issues.

DATES: Written comments must be submitted on or before April 4, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent electronically via <https://www.regulations.gov> (docket ID: EAC-2021-0002). Written comments on the proposed information collection can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: EAVS.

Obtaining a Copy of the Survey: To obtain a free copy of the draft survey instrument: (1) Download a copy at <https://www.regulations.gov> (docket ID: EAC-2021-0002); or (2) write to the EAC (including your address and phone number) at U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: EAVS.

FOR FURTHER INFORMATION CONTACT: Raymond Williams at 202-924-0794, or email research@eac.gov; U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: 2022 Election Administration and Voting Survey; OMB Number Pending.

Needs and Uses

The EAC issues the EAVS to meet its obligations under the Help America Vote Act of 2002 (HAVA) to serve as a national clearinghouse and resource for Start Printed Page 67695 the compilation of information with respect to the administration of Federal elections; to fulfill both the EAC and the Department of Defense Federal Voting Assistance Program's (FVAP) data collection requirements under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); and meet its National Voter Registration Act (NVRA) mandate to collect information from states concerning the impact of that statute on the administration of Federal elections. In addition, under the NVRA, the EAC is responsible for collecting information and reporting, biennially, to Congress on the impact of

that statute. The information the states are required to submit to the EAC for purposes of the NVRA report are found under Title 11 of the Code of Federal Regulations. States that respond to questions in this survey concerning voter registration-related matters will meet their NVRA reporting requirements under 52 U.S.C. 20508 and EAC regulations. Finally, UOCAVA mandates that FVAP work with the EAC and chief state election officials to develop standards for reporting UOCAVA voting information (52 U.S.C. 20302) and that FVAP will store the reported data and present the findings within the congressionally-mandated report to the President and Congress. Additionally, UOCAVA requires that "not later than 90 days after the date of each regularly scheduled general election for Federal office, each state and unit of local government which administered the election shall (through the state, in the case of a unit of local government) submit a report to the EAC on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such a report available to the general public." States that complete and timely submit the UOCAVA section of the survey to the EAC will fulfill their UOCAVA reporting requirement under 52 U.S.C. 20302. In order to fulfill the above requirements, the EAC is seeking information relating to the period from the Federal general election day 2020 +1 through the November 2022 Federal general election. The EAC will provide the data regarding UOCAVA voting to FVAP after data collection is completed. This data sharing reduces burden on local election offices because FVAP does not have to conduct its own data collection to meet its reporting requirements.

Affected Public (Respondents): State or local governments, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

Affected Public: State or local government.

Number of Respondents: 56.

Responses per Respondent: 1.

Estimated Burden per Response: 235 hours per collection, 117.5 hours annualized.

Estimated Total Annual Burden Hours: 13,160 hours per collection, 6,580 hours annualized.

Frequency: Biennially.

Comments: Public 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 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Amanda Joiner,

Acting General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2022-04492 Filed 3-2-22; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST)

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of partially-closed virtual meeting. Due to the COVID-19 pandemic, this meeting will be held virtually for members of the public and in-person for PCAST members.

SUMMARY: This notice announces an open meeting of the President's Council of Advisors on Science and Technology (PCAST). The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, March 24, 2022; 1:00 p.m. to 5:00 p.m. ET.

ADDRESSES: Information to participate virtually can be found on the PCAST website closer to the meeting at: www.whitehouse.gov/PCAST/meetings.

FOR FURTHER INFORMATION CONTACT: Dr. Sarah Domnitz, Designated Federal Officer, PCAST, email: PCAST@ostp.eop.gov.

SUPPLEMENTARY INFORMATION: PCAST is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from the White House, cabinet departments, and other Federal agencies. See the Executive Order at whitehouse.gov. PCAST is consulted on and provides analyses and recommendations concerning a wide range of issues where understanding of science, technology, and innovation may bear on the policy choices before the President. The Designated Federal Officer is Dr. Sarah Domnitz. Information about PCAST can be found at: www.whitehouse.gov/PCAST.

Tentative Agenda

Open Portion of the Meeting: PCAST will hear from invited speakers on and discuss detecting, tracking, mitigating, and preventing wildfires. Additional information and the meeting agenda, including any changes that arise, will be posted on the PCAST website at: www.whitehouse.gov/PCAST/meetings.

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately one hour with the President or Vice President on March 24, 2022, which must take place in the White House for scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because a portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Participation: The meeting is open to the public. The meeting will be held virtually for members of the public.

It is the policy of the PCAST to accept written public comments no longer than 10 pages and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on March 24, 2022, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at PCAST@ostp.eop.gov, no later than 12:00 p.m. Eastern Time on March 17, 2022. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will select speakers on a first-come, first-served basis from those who registered. Those not able to present oral comments may file written comments with the council.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST@ostp.eop.gov no later than 12:00 p.m. Eastern Time on March 17, 2022, so that the comments can be made available to the PCAST members for their consideration prior to this meeting.

PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public

documents and will be made available for public inspection, including being posted on the PCAST website at: www.whitehouse.gov/PCAST/meetings.

Minutes: Minutes will be available within 45 days at: www.whitehouse.gov/PCAST/meetings.

Signed in Washington, DC, on February 25, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022-04467 Filed 3-2-22; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension With Changes

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA invites public comment on the proposed three year extension, with changes, to Form EIA-846 Manufacturing Energy Consumption Survey Report as required under the Paperwork Reduction Act of 1995. The report is part of EIA's comprehensive energy data program. Form EIA-846 Manufacturing Energy Consumption Survey Report (Quadrennial) collects information on energy consumption, expenditures, and building characteristics from establishments in the manufacturing sector.

DATES: EIA must receive all comments on this proposed information collection no later than May 2, 2022. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: Mail comments to Tom Lorenz, U.S Energy Information Administration, EI-22, 1000 Independence Avenue SW, Washington, DC 20585. Submit comments electronically to Thomas.Lorenz@eia.gov.

FOR FURTHER INFORMATION CONTACT: Tom Lorenz by phone at (202) 586-3442, or by email at Thomas.Lorenz@eia.gov. The forms and instructions of EIA-846 Manufacturing Energy Consumption Survey are available on EIA's website at www.eia.gov/survey/.

SUPPLEMENTARY INFORMATION: Comments are invited whether or not: (a) The proposed collection of information is necessary for the proper performance of

agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

This information collection request contains:

- (1) *OMB No.:* 1905-0169;
- (2) *Information Collection Request Title:* Manufacturing Energy Consumption Survey (MECS);
- (3) *Type of Request:* Extension with changes;

(4) *Purpose:* Form EIA-846, is a self-administered sample survey that collects energy consumption and expenditures data from establishments in the manufacturing sector; *i.e.*, North American Industry Classification System (NAICS) sector codes 31-33. The information from this survey is used to publish aggregate statistics on the energy consumption of the manufacturing sector including energy used for fuel and nonfuel purposes. The survey also gathers information on energy-related issues such as energy prices, on-site electricity generation, purchases of electricity from utilities and non-utilities, and fuel switching capabilities. MECS is also used to benchmark EIA's industry forecasting model and update changes in the energy intensity and greenhouse gases data series.

(4a) *Proposed Changes to Information Collection:* EIA proposes adding a few questions to the *Energy Management* section of Form EIA-846 requesting information on an establishment's average processing temperatures and the range of these temperatures across different processes within the establishment. The purpose of these questions is to assist in the measurement of energy efficiency and better understand its relation to the use of process heat across manufacturing industries, consistent with the Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act).

In addition, EIA proposes adding a few follow up questions to the *Electricity: Generated Onsite* section of Form EIA-846. The electricity generated onsite questions on Form EIA-846 request information about renewable energy sources, such as solar, wind, and geothermal, used to generate electricity onsite. The follow up questions EIA

proposes to Form EIA–846 would request information about the use of electricity generated from renewable energy sources that may be shared across more than one establishment. The purpose of these questions is to better understanding the technology, equipment, and infrastructure that may be shared among manufacturing establishments. This change is consistent with the Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act).

EIA proposes adding these questions to the Form EIA–846; however cognitive testing on the questions will need to be conducted and question language may need to be adjusted for clarity.

(5) *Annual Estimated Number of Respondents*: 15,000;

(6) *Annual Estimated Number of Total Responses*: 3,750;

(7) *Annual Estimated Number of Burden Hours*: 34,565;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden*: \$2,882,030 (34,565 annual burden hours multiplied by \$83.38 per burden hour). EIA estimates that respondents will have no additional costs associated with the surveys other than burden hours;

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on February 24, 2022.

Samson A. Adeshiyani,

Director, Office of Statistical Methods and Research, U. S. Energy Information Administration.

[FR Doc. 2022–04470 Filed 3–2–22; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0163; FRL–9408–01–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses—January 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before April 4, 2022.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the File Symbol of the EPA registration Number of interest as shown in the body of this document, through the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets/about-epa-dockets>.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Charles Smith, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090, email address: BPPDFRNotices@epa.gov; or Marietta Echeverria, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: RDFRNotices@epa.gov. The mailing address for each contact person: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipt—New Uses

1. *File Symbol:* 264–776 and 264–826. *Docket ID number:* EPA–HQ–OPP–2021–0448. *Applicant:* Bayer CropScience LP, Bayer CropScience LP, 800 N Lindbergh Boulevard, St. Louis, MO 63169. *Active ingredient:* Trifloxystrobin. *Product type:* Fungicide. *Proposed use:* Dry bulb onion, green onion, snap bean and crop group subgroup conversions and expansions. *Contact:* RD.

2. *EPA Registration Number:* 352–841. *Docket ID number:* EPA–HQ–OPP–2022–0130. *Applicant:* E.I. du Pont de Nemours and Company, Chestnut Plaza Run, 974 Centre Road, Wilmington, DE 19805. *Active ingredient:* Chlorantraniliprole. *Product type:* Insecticide. *Proposed use:* Seed treatment on sweet corn, sorghum, dried rice and dried peas. *Contact:* RD.

3. *EPA Registration Number:* 59639–198. *Docket ID number:* EPA–HQ–OPP–2022–0101. *Applicant:* Valent U.S.A. LLC, 4600 Norris Canyon Road, P.O. Box 5075, San Ramon, CA 94583–0975.

Active ingredient: Mandestrobin (2RS)-2-{2-[(2,5-dimethylphenoxy)methyl]phenyl}-2-methoxy-N-methylacetamide. *Product type:* Fungicide. *Proposed use:* Vegetable, tuberous and corm, except potato, subgroup 1D. *Contact:* RD.

4. *EPA Registration Number:* 59639–201. *Docket ID number:* EPA–HQ–OPP–2022–0101. *Applicant:* Valent U.S.A. LLC, 4600 Norris Canyon Road, P.O. Box 5075, San Ramon, CA 94583–0975. *Active ingredient:* Mandestrobin (2RS)-2-{2-[(2,5-dimethylphenoxy)methyl]phenyl}-2-methoxy-N-methylacetamide. *Product type:* Fungicide. *Proposed use:* Vegetable, tuberous and corm, except potato, subgroup 1D. *Contact:* RD.

5. *EPA File Symbol:* 73049–LEA. *Docket ID number:* EPA–HQ–OPP–2022–0104. *Applicant:* Valent Biosciences LLC, 1910 Innovation Way, Suite 100, Libertyville, IL 60048. *Active ingredient:* Fenprothrin at 4.0%; abamectin at 1.5%; octanoic acid at 0.33%; nonanoic acid at 0.33%; decanoic acid at 0.33%. *Product type:* Insecticide. *Proposed Use:* Wide-area mosquito adulticide. *Contact:* RD.

6. *EPA Registration Numbers:* 73314–6 and 73314–19. *Docket ID number:* EPA–HQ–OPP–2022–0100. *Applicant:* Novozymes BioAg, Inc., 3101 Custer Avenue, Milwaukee, WI 53209. *Active ingredient:* Lipo-chitoooligosaccharides (LCOs) SP104. *Product type:* Biochemical Plant Growth Regulator (PGR). *Proposed use:* New foliar and in-furrow applications for terrestrial, greenhouse, and nursery use. *Contact:* BPPD.

7. *EPA File Symbol:* 90098–R. *Docket ID number:* EPA–HQ–OPP–2021–0965. *Applicant:* Central Garden & Pet, P.O. Box 1019, Salem, VA 24153–1019. *Active ingredient:* Transfluthrin. *Product type:* Insecticide. *Proposed Use:* Outdoors and semi enclosed areas. *Contact:* RD.

8. *EPA Registration Number:* 91473–1. *Docket ID number:* EPA–HQ–OPP–2022–0127. *Applicant:* Seipasa, S.A., C/ Almudevar, No. 2, Tardienta (Huesca), 22240, Spain, (c/o Walter G. Talarek, PC, 5153 Allison Marshall Drive, Warrenton, VA 20187). *Active ingredient:* *Bacillus subtilis* strain IAB/BS03. *Product type:* Fungicide. *Proposed use:* Interiorscape applications. *Contact:* BPPD.

9. *File Symbol:* 95058–R. *Docket ID number:* EPA–HQ–OPP–2021–0966. *Applicant:* Agroindustrial Kimitec S.L., Santa Marta, 13 Almeria, 04740, Spain (c/o Compliance Services International, 7501 Bridgeport Way West, Lakewood, WA 98499). *Active ingredient:* Eucalyptus Oil. *Product type:* Insecticide/acaricide. *Proposed use:* For

use on agricultural and ornamental food and non-food crops. *Contact:* BPPD.

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: February 8, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–04493 Filed 3–2–22; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

Request for Information To Support the Development of a Federal Scientific Integrity Policy Framework

AGENCY: White House Office of Science and Technology Policy (OSTP).

ACTION: Notice of request for information (RFI).

SUMMARY: The White House Office of Science and Technology Policy (OSTP) seeks information to assist in developing a framework for regular assessment and iterative improvement of agency scientific integrity policies and practices. This effort builds on the Scientific Integrity Task Force’s review of existing scientific integrity policies and practices, released in the January 11, 2022 report, *Protecting the Integrity of Government Science*.

DATES: Interested persons and organizations are invited to submit comments on or before 5:00 p.m. ET on April 4, 2022.

ADDRESSES: Interested individuals and organizations should submit comments electronically to *ScientificIntegrityRFI@ostp.eop.gov* and include “SI RFI” in the subject line of the email. Due to time constraints, mailed paper submissions will not be accepted, and electronic submissions received after the deadline cannot be ensured to be incorporated or taken into consideration.

Instructions: Response to this RFI is voluntary. Each responding entity (individual or organization) is requested to submit only one response. OSTP welcomes any responses to inform and guide the work of OSTP. Please feel free to respond to one or as many prompts as you choose. Submission must not exceed 10 pages in 12 point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment, as well as the respondent type (e.g., academic, advocacy, professional society, community-based organization, industry, trainee/student, member of the public, government, other).

Respondent’s role in the organization may also be provided (e.g., researcher, faculty, student, program manager, journalist) on a voluntary basis. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. No business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this RFI. If you submit scientific or technical studies or other results of scientific research, OSTP requests (but is not requiring) that you also provide the following information where it is available: (1) Identification of the funding source(s) and sponsoring organization(s) of the research; (2) the extent to which the research findings were reviewed by a potentially affected party prior to publication or submission to the docket, and identification of any such parties; and (3) the nature of any financial relationships (e.g., consulting agreements, expert witness support, or research funding) between investigators who conducted the research and any organization(s) or entities having a financial interest in Federal scientific integrity. Disclosure of such information is intended to promote transparency and scientific integrity of data and technical information submitted to the record. Please be aware that comments submitted in response to this RFI may be posted on OSTP’s website or otherwise released publicly.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

FOR FURTHER INFORMATION CONTACT: For additional information, please direct questions to Dr. Ryan Donohue at 202–456–4444 or *ScientificIntegrity@ostp.eop.gov*.

SUPPLEMENTARY INFORMATION: The framework will include assessment criteria that OSTP and agencies can use to inform, review, and improve the content and implementation of agency scientific-integrity policies. To support this framework, OSTP seeks information on: (1) How scientific integrity policies can address important and emergent issues of our time, including diversity, equity, inclusion and accessibility; new technologies; emerging modes of science; and coordination with related policy domains; (2) The criteria to evaluate scientific integrity policy

content, implementation, outcomes and impacts in the Executive Branch; (3) How to ensure that scientific integrity evaluation findings lead to effective iterative improvement of Federal scientific integrity policy and practices; and (4) How to ensure the long-term viability and implementation of Federal scientific integrity policies, practices, and culture through future Administrations.

Please note the purpose of this RFI is not to receive reports on alleged offenses that are in violation of Federal scientific integrity policies. If you have witnessed or experienced any harmful acts that may undermine scientific integrity and you would like to report these allegations, please contact the scientific integrity office or the Office of Inspector General at the relevant Federal agency.

Background: On January 27, 2021, President Biden issued the Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking (2021 Presidential Memorandum). The 2021 Presidential Memorandum asserts the Administration's goal to make evidence-based policy decisions guided by the best available science and data, recognizing that scientific and technological information, data, and evidence are central to the development and iterative improvement of sound policies and to the delivery of equitable programs across every area of government. The 2021 Presidential Memorandum emphasizes that political interference in the work of Federal scientists and other scientists who support the work of the Federal government and in the communication of scientific facts undermines the welfare of the Nation, contributes to systemic inequities and injustices, and violates the trust that the public places in government to best serve its collective interests. The 2021 Presidential Memorandum reaffirms and builds on the Presidential Memorandum of March 9, 2009 (Scientific Integrity) and the Director of the Office of Science and Technology Policy's Memorandum of December 17, 2010 (Scientific Integrity), which together specify elements that scientific integrity policies of Federal departments and agencies are to address.

On January 11, 2022, OSTP issued a report of its Scientific Integrity Task Force titled, *Protecting the Integrity of Government Science*, that included an assessment of Federal scientific integrity policies and practices. Among other remarks on scientific integrity policies, the report stated that agencies need to

strengthen scientific integrity policies to deter undue influence in the conduct, management, communication, and use of science; that violations involving high-level officials are the most problematic and difficult to address; and that further action is required to establish and maintain a culture of scientific integrity across all individuals and agencies that conduct, manage, communicate, and make use of science. The Task Force report also notes that a strong organizational culture of scientific integrity is a necessary foundation to reduce the potential for wrongdoing, protect against inappropriate influence, reinforce agency missions and goals, and ensure equitable delivery of Federal Government programs. The report made several recommendations. All Federal agencies—not just those that fund and conduct scientific research—need to develop, implement, and periodically review and update scientific integrity policies and that agencies need to apply scientific integrity policies to all those in Federal agencies who conduct, manage, communicate, or use science. Further, the report identified numerous good practices that Federal agencies can readily adopt and adapt for use as appropriate to their different missions and needs, including: (1) Fostering a culture of scientific integrity, which involves effective agency leadership and modeling of appropriate behaviors; (2) protecting the integrity of the research process; (3) communicating science with integrity, which entails effective and transparent communication of scientific information to decision-makers, the media, and the American people; and (4) Safeguarding scientific integrity, which requires clear, visible procedures for reporting concerns, robust assessment and adjudication, and consistent enforcement of consequences when violations are found. Finally, the report recommended that scientific integrity policies be updated to address important and emergent issues of our time, including diversity, equity, inclusion, and accessibility; new technologies, including artificial intelligence and machine learning; emerging modes of science, such as citizen science and community-engaged research; and coordination with related policy domains, such as open data and promotion of safe, equitable workplaces.

The 2021 Presidential Memorandum directs the development of a framework to inform and support the regular assessment and iterative improvement of agency scientific integrity policies and practices, to support the Director and OSTP in ensuring that agencies

adhere to the principles of scientific integrity. This framework shall be completed 120 days after the release of the Task Force report and include assessment criteria that OSTP and agencies can use to inform, review, and improve the design and implementation of agency scientific-integrity policies. The Director shall publish this framework on the OSTP website.

This request for information aims to support OSTP's and the Task Force's work to develop the framework for regular assessment and iterative improvement of agency scientific integrity policies and practices. This RFI is motivated by the Presidential Memorandum's direction that the Task Force gather input from stakeholders and the public regarding the scientific integrity policies and practices and the Scientific Integrity Task Force's previous listening sessions, which underscored the need for ongoing public engagement on scientific integrity and policymaking processes.

Information Requested

Respondents may provide information on one or as many topics below as they choose. Input is welcome from stakeholders and members of the public representing all backgrounds and perspectives. Through this RFI, OSTP seeks information on assessment and improvement of scientific integrity policies and practices in the Federal government, including on the following topics:

1. *Information is requested on how scientific integrity policies at Federal agencies and other components of the Executive Branch can be developed or updated to address important and emergent issues of our time, including: (1) Diversity, equity, inclusion, and accessibility, which are essential to advancing the conduct, communication, and use of science, ensuring the equitable delivery of government programs, and improving equitable participation in science by diverse communities across the Nation; (2) New technologies, such as artificial intelligence, machine learning, and the lack of transparency and potential for bias in computer algorithms and associated data; (3) Emerging modes of science, such as citizen science and community-engaged research; and (4) Coordination with related policy domains, such as open science and data; quality guidelines for data and information that agencies release; promotion of safe, equitable workplaces free from harassment and discrimination; and protection of research security and responding to research misconduct.*

2. Information is requested on the criteria that should be used to evaluate scientific integrity policies: Content, implementation, outcomes, and impacts in Federal agencies and other components of the Executive Branch. Consider methods and metrics for evaluating elements such as, but not limited to: Policy provisions, practices, capacity, and actions so that determinations can be made on their efficacy to achieve desired outcomes and impacts.

3. Information is requested on how to ensure that scientific integrity evaluation findings, and other findings that evolve over time, such as findings on the emergent issues identified above, lead to iterative improvement of Federal scientific integrity policy and practices. Consider information covering, but not limited to: Types and frequency of evaluation of agency scientific integrity policies and practices; steps that OSTP, Federal agencies, and other components of the Executive Branch should take to ensure regular comprehensive evaluation and continuous improvement of scientific integrity policies and practices; and other mechanisms or process elements that should be included in the framework to ensure effective iterative improvement of Federal scientific integrity policy and practices.

4. Information is requested on how to ensure the long-term viability and implementation of Federal scientific integrity policies, practices, and culture through future Administrations. Consider information on, but not limited to: Ways to ensure Federal scientific integrity is robust through changes in government leadership, funding, and cultural shifts; how to institutionalize policies and practices that ensure the integrity of science, build and sustain a culture of scientific integrity, and encourage transparency; and how to provide accountability, such as through procedures to identify, address, and provide appropriate and meaningful consequences for instances when scientific integrity policies have been violated.

Dated: February 28, 2022.

Stacy Murphy,

Operations Manager.

[FR Doc. 2022-04466 Filed 3-2-22; 8:45 am]

BILLING CODE 3270-F1-P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 19-329; FR ID 73477]

Federal Advisory Committee Act; Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States (Task Force) will hold its next meeting via live internet link.

DATES: March 21, 2022. The meeting will come to order at 10:00 a.m. EST.

ADDRESSES: The meeting will be held via conference call and be available to the public via live feed from the FCC's web page at www.fcc.gov/live.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cuttner, Designated Federal Officer, at (202) 418-2145, or Elizabeth.Cuttner@fcc.gov; Stacy Ferraro, Deputy Designated Federal Officer, at (202) 418-0795, or Stacy.Ferraro@fcc.gov; or Lauren Garry, Deputy Designated Federal Officer, at (202) 418-0942, or Lauren.Garry@fcc.gov.

SUPPLEMENTARY INFORMATION: The meeting will be held on March 21, 2022 at 10:00 a.m. EST and may be viewed live, by the public, at <http://www.fcc.gov/live>. Any questions that arise during the meeting should be sent to PrecisionAgTF@fcc.gov and will be answered at a later date. Members of the public may submit comments to the Task Force in the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Comments to the Task Force should be filed in GN Docket No. 19-329. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute

requests will be accepted but may not be possible to fill.

Proposed Agenda: At this meeting, the Task Force will provide updates on Task Force administration; review and discuss programs and policies relevant to the Task Force's duties; and continue to discuss strategies to advance broadband deployment on agricultural land and promote precision agriculture. This agenda may be modified at the discretion of the Task Force Chair and the Designated Federal Officer.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022-04415 Filed 3-2-22; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 74524]

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended ("Privacy Act"), this document announces a new computer matching program the Federal Communications Commission ("FCC" or "Commission" or "Agency") and the Universal Service Administrative Company (USAC) will conduct with the Virginia Department of Social Services ("Department" ("Agency")). The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline, and the Affordable Connectivity Program (ACP), both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before April 4, 2022. This computer matching program will commence on April 4, 2022, and will conclude 18 months after the effective date.

ADDRESSES: Send comments to Linda Oliver, FCC, 45 L Street NE, Washington, DC 20554, or to Privacy@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Linda Oliver at 202-418-1732 or Privacy@fcc.gov.

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers.

Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs.

In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 stat. 1182, 2129–36 (2020) (codified at 47 U.S.C. 1301 nt.), Congress created the Emergency Broadband Benefit Program, and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided \$3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional \$14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC’s Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (“National Verifier”), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants’ eligibility for ACP. The purpose of this matching program is to verify the eligibility of Lifeline and ACP applicants and subscribers by determining whether they receive Medicaid or SNAP benefits administered by the Virginia Department of Social Services.

Participating Agencies: Virginia Department of Social Services.

Authority for Conducting the Matching Program: The authority for the FCC’s ACP is Infrastructure Investment and Jobs Act, Public Law 117–58, 135 stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52); 47 CFR part 54. The authority for the FCC’s Lifeline program is 47 U.S.C. 254; 47 CFR 54.400 through 54.423; Lifeline and Link Up Reform and Modernization, *et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (*2016 Lifeline Modernization Order*).

Purpose(s): The purpose of this modified matching agreement is to verify the eligibility of applicants and subscribers to Lifeline, as well as to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for the Lifeline program and ACP by checking an applicant’s/subscriber’s participation in Medicaid and SNAP in Virginia. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for ACP benefits.

Categories of Individuals: The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or ACP benefits; are currently receiving Lifeline and/or ACP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or ACP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or ACP benefits; or are individuals who have received Lifeline and/or ACP benefits.

Categories of Records: The categories of records involved in the matching program include, but are not limited to, the last four digits of the applicant’s Social Security Number, date of birth, and last name. The National Verifier will transfer these data elements to the Virginia Department of Social Services, which will respond either “yes” or “no” that the individual is enrolled in a qualifying assistance program: Medicaid or SNAP administered by the Virginia Department of Social Services.

System(s) of Records: The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 86 FR 11526 (Feb. 25, 2021).

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 86 FR 71494 (Dec. 16, 2021).

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2022–04421 Filed 3–2–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, March 8, 2022 at 10:00 a.m. and its continuation at the conclusion of the open meeting on March 10, 2022.

PLACE: 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2022–04558 Filed 3–1–22; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2022–N–2]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning an information collection known as “Advances to Housing Associates,” which has been assigned control number 2590–0001 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on June 30, 2022.

DATES: Interested persons may submit comments on or before May 2, 2022.

ADDRESSES: Submit comments to FHFA, identified by “Proposed Collection; Comment Request: ‘Advances to Housing Associates, (No. 2022–N–2)’” by any of the following methods:

- *Agency Website:* www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency.

- *Mail/Hand Delivery:* Federal Housing Finance Agency, Office of General Counsel, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: “Advances to Housing Associates, (No. 2022–N–2)”.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at <http://www.fhfa.gov>.

Copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT:

James Hedrick, Senior Financial Analyst, by email at James.Hedrick@FHFA.gov, by telephone at (202) 649–3319, or Angela Supervielle, Counsel, Angela.Supervielle@fhfa.gov, (202) 649–3973 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) establishes the requirements for making Federal Home Loan Bank (Bank) advances (secured loans) to nonmember mortgagees, which are referred to as “Housing Associates” in FHFA’s regulations.¹ Section 10b also establishes the eligibility requirements an applicant must meet in order to be certified as a Housing Associate.

Part 1264 of FHFA’s regulations implements the statutory eligibility requirements and establishes uniform review criteria the Banks must use in evaluating applications from entities that wish to be certified as a Housing

Associate. Specifically, § 1264.4 implements the statutory eligibility requirements and provides guidance to an applicant on how it may satisfy those requirements.² Section 1264.5

authorizes the Banks to approve or deny all applications for certification as a Housing Associate, subject to the statutory and regulatory requirements.³ Section 1264.6 permits an applicant that has been denied certification by a Bank to appeal that decision to FHFA.⁴

Subpart B of 12 CFR part 1266 governs Bank advances to Housing Associates that have been approved under 12 CFR part 1264. Section 1266.17 establishes the terms and conditions under which a Bank may make advances to Housing Associates.⁵ Specifically, § 1266.17(e) imposes a continuing obligation on each certified Housing Associate to provide information necessary for the Bank to determine if it remains in compliance with applicable statutory and regulatory requirements, as set forth in part 1264.

The OMB control number for the information collection, which expires on June 30, 2022, is 2590–0001. The likely respondents include entities applying to be certified as a Housing Associate and current Housing Associates.

B. Burden Estimates

FHFA estimates the total annualized hour burden imposed upon respondents by this information collection to be 306 hours (14 hours for applicants + 292 hours for current Housing Associates), based on the following calculations:

I. Applicants

FHFA estimates that the total annual average number of entities applying to be certified as a Housing Associate over the next three years will be one, with one response per applicant. The estimate for the average hours per application is 14 hours. Therefore, the estimate for the total annual hour burden for all applicants is 14 hours (1 applicant × 1 response per applicant × 14 hours = 14 hours).

II. Current Housing Associates

FHFA estimates that the total annual average number of existing Housing Associates over the next three years will be 73, with one response per Housing Associate required to comply with the regulatory reporting requirements. The estimate for the average hours per response is 4 hours. Therefore, the

estimate for the total annual hour burden for current Housing Associates is 292 hours (73 certified Housing Associates × 1 response per associate × 4 hours = 292 hours).

C. Comments Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA’s estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

[FR Doc. 2022–04439 Filed 3–2–22; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P1–22]

Petition of Expeditors International of Washington, Inc. for a Temporary Exemption From the Statutory Tariff Publication Requirements; Notice of Filing and Request for Comments

Served: February 25, 2022.

Notice is hereby given that Expeditors International of Washington, Inc., (“Petitioner”) has petitioned the Commission pursuant to 46 U.S.C. 40103 and 46 CFR 502.92 requesting a 90-day “exemption from the statutory tariff publication requirements at 46 U.S.C. 40501 and the corresponding FMC regulations at 46 CFR 520.7(c), 520.8(a)(1) and 520.8(a)(4)” Petitioner states that it is a non-vessel-operating common carrier (NVOCC) and that the exemption would “allow time for it to cope with the consequences of a targeted cyber-attack that caused it to shut down most of its operating systems globally in protection of its systems, including its ability to access and update its electronic ocean transportation rate tariffs”.

In order for the Commission to make a thorough evaluation of the requested exemption and rulemaking presented in the Petition, pursuant to 46 CFR 502.92, interested parties are requested to submit views or arguments in reply to the Petition no later than March 7, 2022. Replies shall be sent to the Secretary by email to Secretary@fmc.gov or by mail

² See 12 CFR 1264.4.

³ See 12 CFR 1264.5.

⁴ See 12 CFR 1264.6.

⁵ See 12 CFR 1266.17.

¹ See 12 U.S.C. 1430b; 12 CFR 1264.3.

to Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573-0001, and replies shall be served on Petitioner's counsel, Richard D. Gluck, Foster Garvey PC, 1000 Potomac Street NW, Suite 200, Washington, DC 20007, *Richard.Gluck@foster.com*.

Non-confidential filings may be submitted in hard copy to the Secretary at the above address or by email as a PDF attachment to *Secretary@fmc.gov* and include in the subject line: P1-22 (Commenter/Company). Confidential filings should not be filed by email. A confidential filing must be filed with the Secretary in hard copy only and be accompanied by a transmittal letter that identifies the filing as "Confidential-Restricted" and describes the nature and extent of the confidential treatment requested. The Commission will provide confidential treatment to the extent allowed by law for confidential submissions, or parts of submissions, for which confidentiality has been requested. When a confidential filing is submitted, there must also be submitted a public version of the filing. Such public filing version shall exclude confidential materials and shall indicate on the cover page and on each affected page "Confidential materials excluded." Public versions of confidential filings may be submitted by email. The Petition will be posted on the Commission's website at <http://www.fmc.gov/P1-22>. Replies filed in response to the Petition will also be posted on the Commission's website at this location.

William Cody,
Secretary.

[FR Doc. 2022-04437 Filed 3-2-22; 8:45 am]

BILLING CODE 6730-02-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov*, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's

website (www.fmc.gov) or by contacting the Office of Agreements at (202) 523-5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 201379.

Agreement Name: Crowley/King Ocean Dominican Republic/Haiti Space Charter Agreement.

Parties: Crowley Latin America Services, LLC and King Ocean Services Limited, Inc.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to charter space to/from one another on a space available/as used basis in the trade between the U.S. Atlantic Coast on the one hand and ports in the Dominican Republic and Haiti on the other hand.

Proposed Effective Date: 2/22/2022.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/59504>.

Agreement No.: 201380.

Agreement Name: Crowley/Antillean Dominican Republic/Haiti Space Charter Agreement.

Parties: Antillean Marine Shipping Corporation and Crowley Latin America Services, LLC.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to charter space to/from one another on a space available/as used basis in the trade between the U.S. Atlantic Coast on the one hand and ports in the Dominican Republic and Haiti on the other hand.

Proposed Effective Date: 2/24/2022.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/59505>.

Agreement No.: 201356-002.

Agreement Name: PFLG/NPDL Slot Charter Agreement.

Parties: Neptune Pacific Direct Line Pte. Ltd. and Pacific Forum Line (Group) Limited.

Filing Party: David Monroe; GKG Law.

Synopsis: The amendment updates the amount of space being chartered under the Agreement.

Proposed Effective Date: 2/17/2022.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/39510>.

Agreement No.: 201378.

Agreement Name: NPDL/PFLG Slot Charter Agreement.

Parties: Neptune Pacific Direct Line Pte. Ltd. and Pacific Forum Line (Group) Limited.

Filing Party: David Monroe; GKG Law.

Synopsis: The purpose of this agreement is to allow NPDL to charter space to PFLG in the relevant trades.

Proposed Effective Date: 2/17/2022.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/59502>.

Dated: February 18, 2022.

William Cody,
Secretary.

[FR Doc. 2022-04436 Filed 3-2-22; 8:45 am]

BILLING CODE 6730-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS-10398 #64]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the "generic" clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are "usually voluntary, low-burden, and uncontroversial collections," do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938-1148 (CMS-10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register** notices. The scope of the April 2021 umbrella accounts for Medicaid and CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: The necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of

the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by March 17, 2022.

ADDRESSES: When commenting, please reference the applicable form number (see below) and the OMB control number (0938–1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10398 (#64)/OMB control number: 0938–1148, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may access CMS’ website at <https://www.cms.gov/PaperworkReductionActof1995/PRA-Listing.html>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection’s supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title of Information Collection:* Medicaid Section 1115 Substance Use Disorder (SUD) Demonstration: Federal Meta-Analysis Support; *Type of Information Collection Request:* Revision of a currently approved collection; *Use:* Starting in 2015, in response to the opioid epidemic, CMS offered states the flexibility to test Medicaid coverage of a full substance use disorder (SUD) treatment service array in the context of overall SUD service delivery transformation through the authority of section 1115 demonstrations. In 2017, CMS modified the requirements for SUD section 1115

demonstrations to improve access to clinically appropriate treatment for OUD and other SUDs, to better support the development and expansion of comprehensive treatment strategies, and to incorporate improved progress and outcome monitoring. In 2018, CMS awarded the Federal Meta-Analysis Support contract to RTI International to understand the overall effectiveness of the groups of demonstrations with similar features and how variations in state demonstration features and the context in which they are implemented contribute to differences in effectiveness. The meta-analysis includes multiple rounds of qualitative data collection. The first round of interviews (both, Characteristics Interviews and Implementation Interviews) have been completed. This March 2022 collection of information request seeks OMB’s approval for a second round (State-level Stakeholder Virtual Interviews) of data collection activities. The purpose is to learn about the perspectives of other types of stakeholders important to implementing the demonstration. Respondents would include stakeholders with differing perspectives, including leadership of behavioral health service providers and leadership of MCOs or third-party administrators in states with fee-for-service SUD treatment services. *Form Number:* CMS–10398 (#64) (OMB control number: 0938–1148); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments, and the Private sector; *Number of Respondents:* 90; *Total Annual Responses:* 90; *Total Annual Hours:* 83. (For policy questions regarding this collection contact: Danielle Daly at 410–786–0897.)

Dated: February 28, 2022.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–04445 Filed 3–2–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0964]

Eduardo Navarro: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing an order under the Federal

Food, Drug, and Cosmetic Act (FD&C Act) permanently debaring Eduardo Navarro from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Navarro was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product under the FD&C Act. Mr. Navarro was given notice of the proposed permanent debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of December 24, 2021 (30 days after receipt of the notice), Mr. Navarro had not responded. Mr. Navarro’s failure to respond and request a hearing within the prescribed timeframe constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is applicable March 3, 2022.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at debarments@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(A) of the FD&C Act (21 U.S.C. 335a(a)(2)(A)) requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act. On August 11, 2021, Mr. Navarro was convicted as defined in section 306(l)(1) of the FD&C Act in the U.S. District Court for the Southern District of Florida, Miami Division, when the court accepted his plea of guilty and entered judgment against him for one count of Conspiracy to Defraud the United States in violation of 18 U.S.C. 371.

The factual basis for this conviction is as follows: As contained in the Information, entered into the docket on March 16, 2021, and the Factual Proffer in Support of his guilty plea, entered

into the docket on June 8, 2021, both from his case, Mr. Navarro was an advanced Registered Nurse Practitioner employed as a sub-investigator at Tellus Clinical Research (Tellus) under the direction of a clinical investigator. Tellus was a medical clinic that conducted clinical trials on behalf of pharmaceutical company sponsors. A drug manufacturer (Sponsor) initiated a clinical trial concerning a new investigational drug intended to treat patients suffering from irritable bowel syndrome (Study or IBS Trial). The Sponsor retained a Contract Research Organization (CRO) to manage various aspects of the IBS Trial. The CRO entered into a contract with Tellus and Martin Valdes, a medical doctor serving as a clinical investigator for clinical trials conducted at Tellus and as the clinical investigator for the IBS Trial. The study protocol for the IBS trial required subjects to make periodic scheduled visits to the clinical trial site for which they were paid \$100 per visit. During some of these visits, subjects were required to provide blood samples for pharmacokinetic analysis, receive physical exams by clinical trial staff, and undergo electrocardiograms. Subjects were also required to use an “e-diary” system to report their daily experience with the Study drugs. They would do this by making daily phone calls to a number maintained by a third party and answering automated questions nonverbally by touch-tone buttons.

In his role as a sub-investigator, Mr. Navarro was responsible for conducting physical exams on subjects, reviewing lab work and electrocardiograms, and preparing case histories reflecting the participation of subjects in the Study. However, Mr. Navarro and his co-conspirators engaged in an effort to impair, impede, and obstruct FDA’s legitimate function of regulating clinical trials of drugs in order to obtain money. Mr. Navarro and his co-conspirators did this by fabricating medical records to portray persons as legitimate Study subjects when they were not. He and his co-conspirators falsified these records to make it appear that the Study subjects had consented to participating in the Study, satisfied the Study’s eligibility criteria, appeared for scheduled visits at the Study’s site, taken Study drugs as required, and received checks as payment for site visits, among other things. For example, Mr. Navarro represented that he had seen a purported Study subject and performed a physical examination of her when he knew she was not a Study subject and these representations were false. Mr.

Navarro also knew that one or more of his co-conspirators placed telephone calls to the e-diary system for the purposes of reporting fabricated data on behalf of purportedly legitimate Study subjects.

As a result of this conviction, FDA sent Mr. Navarro by certified mail on November 8, 2021, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) of the FD&C Act, that Mr. Navarro was convicted, as set forth in section 306(l)(1) of the FD&C Act, of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act. The proposal also offered Mr. Navarro an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted an election not to use the opportunity for a hearing and a waiver of any contentions concerning this action. Mr. Navarro received the proposal on November 24, 2021. He did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(A) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Navarro has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act.

As a result of the foregoing finding, Mr. Navarro is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see section 306(a)(2)(A) and (c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Mr. Navarro in any capacity during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Navarro provides services in any capacity to a person with an approved or pending drug product application

during his period of debarment, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Mr. Navarro during his period of debarment, other than in connection with an audit under section 306(c)(1)(B) of the FD&C Act. Note that, for purposes of sections 306 and 307 of the FD&C Act, a “drug product” is defined as a drug subject to regulation under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Any application by Mr. Navarro for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2021–N–0964 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions will be placed in the docket and will be viewable at <https://www.regulations.gov> or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: February 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–04459 Filed 3–2–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0873]

Patrick Charles Bishop: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Patrick Charles Bishop for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Bishop was convicted of one felony count under Federal law for conspiracy to commit fraud. The factual basis supporting Mr. Bishop’s conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Bishop was given notice of the proposed

debarment and was given an opportunity to request a hearing to show why he should not be debarred. Mr. Bishop provided notice to FDA that he acquiesced to the debarment; FDA received that notice on January 4, 2022. As such, his debarment commenced on the date FDA was notified of acquiescence.

DATES: This order is applicable January 4, 2022.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500, or at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM-4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240-402-8743, or at debarments@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance. On July 9, 2021, Mr. Bishop was convicted, as defined in section 306(l)(1) of FD&C Act, in the U. S. District Court for the Northern District of Alabama, when the court entered judgment against him for the offense of conspiracy to commit fraud, in violation of 18 U.S.C. 371.

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: As contained in the plea agreement in Mr. Bishop's case, filed on January 7, 2021, in which he pleaded guilty, he owned Patrick, LLC and employed other individuals. Using the business name "Best Peptide Supply, LLC," he ordered PNC-27 from GL Biochem (Shanghai), Ltd., a supplier based in China, and used the PNC-27 to manufacture drug products intended for the treatment of cancer in humans. FDA has not approved PNC-27 for use in the United States as a drug to treat any disease, including any form of cancer. He obtained PNC-27 under the false pretense that he intended to use the product solely for laboratory research purposes. In fact, he provided invoices

to GL Biochem that did not use the term "PNC-27" and included the statement "FOR RESEARCH ONLY." He falsely certified to GL Biochem that the product he was purchasing from GL Biochem was "restricted to laboratory research purposes, excluding clinical research on [the] human body."

Mr. Bishop also falsely represented to FDA personnel that the product shipped from GL Biochem was to be used for laboratory testing and scientific research. Mr. Bishop directed GL Biochem to ship the PNC-27 to his residences and other locations in the State of Alabama where he used the PNC-27 he purchased to manufacture drug products intended for human use to treat cancer. Specifically, along with others, Mr. Bishop knowingly caused PNC-27 to be processed into a "water-based PNC-27 drug product" as well as suppositories using methods, controls, and facilities that did not conform to current good manufacturing practice. Mr. Bishop sold and distributed the unapproved, misbranded, and adulterated PNC-27 drug products he manufactured to individuals in other States and countries; these drug products failed to bear directions for use, and some bore no labeling whatsoever. To avoid detection by FDA and to conceal the nature of these unapproved, misbranded, and adulterated drug products, Mr. Bishop operated under the business name "Immuno Cellular Restoration Program, Inc. (ICRP)" and used the terms, "research," "sample," "ICRP" and "ICRPstudy.com" on his product labels and shipping documentation. Mr. Bishop received millions of dollars in payments for his unapproved, misbranded, and adulterated PNC-27 drug products.

As a result of this conviction, FDA sent Mr. Bishop, by certified mail, on October 18, 2021, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Bishop's felony conviction for one count of conspiracy to commit fraud was for conduct relating to the importation into the United States of any drug or controlled substance because he conspired to illegally import, manufacture, and distribute in interstate commerce unapproved, misbranded, and adulterated drug products while concealing this conduct from Federal authorities in violation of 18 U.S.C. 371. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Bishop's

offense and concluded that the felony offense warranted the imposition of a 5-year period of debarment.

The proposal informed Mr. Bishop of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Bishop received the proposal and notice of opportunity for a hearing on October 25, 2021. Mr. Bishop sent a memorandum to FDA, dated November 3, 2021, wherein he stated that he acquiesced to the proposed debarment. FDA received the memorandum on January 4, 2022. In accordance with section 306(c)(2)(B) of the FD&C Act, Mr. Bishop's period of debarment shall commence on the date FDA received notice he acquiesced to the debarment, which was January 4, 2022 (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Patrick Charles Bishop has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Bishop is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective January 4, 2022. Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Bishop is a prohibited act.

Any application by Mr. Bishop for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA-2021-N-0873 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at <https://www.regulations.gov> or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

Dated: February 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022-04469 Filed 3-2-22; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2021-N-0665]

George Kuiper: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debaring George Kuiper for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Kuiper was convicted of multiple felony offenses: One count of smuggling, one count of conspiracy to smuggle goods into the United States and to introduce into interstate commerce unapproved drugs, and one count of introduction into interstate commerce of unapproved drugs. The factual basis supporting Mr. Kuiper's convictions, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Kuiper was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of December 8, 2021 (30 days after receipt of the notice), Mr. Kuiper had not responded. Mr. Kuiper's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable March 3, 2022.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500, or at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM-4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240-402-8743, or at debarments@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if the FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On May 26, 2021, Mr. Kuiper was convicted, as defined in section 306(l)(1) of FD&C Act, in the U.S. District Court for the District of New Hampshire, when the court entered judgment against him for one count of smuggling in violation of 18 U.S.C. 545; one count of conspiracy to smuggle goods into the United States and to introduce into interstate commerce unapproved drugs in violation of 18 U.S.C. 371 and 545 and sections 301(d) and 303(a)(2) of the FD&C Act (21 U.S.C. 331(d) and 333(a)(2)); and one count of introduction into interstate commerce of unapproved drugs in violation of sections 301(d) and 303(a)(2) of the FD&C Act. FDA's finding that debarment is appropriate is based on the felony convictions referenced herein.

The factual basis for these convictions is as follows: As contained in the plea agreement in Mr. Kuiper's case, filed on December 21, 2020, from as early as 2006, and until June 2020, Mr. Kuiper operated an internet pharmacy through several websites which changed over the years. Specifically, Mr. Kuiper operated the website *nubrain.com* until February 2015, when the registration for the website was revoked after FDA notified the domain name registrar that the website was selling products in violation of section 301 of the FD&C Act). Mr. Kuiper then immediately re-established his operations on a new website, *healthclown.com*. On both these websites, Mr. Kuiper offered for sale over 100 types of products, including prescription drugs and controlled substances.

Mr. Kuiper's best-selling product through these websites was modafinil, a new prescription drug, and a Schedule IV controlled substance. FDA-approved modafinil, sold under the trade name PROVIGIL, is indicated to improve wakefulness in patients with excessive daytime sleepiness associated with narcolepsy, and it is only available by prescription. The version of modafinil Mr. Kuiper sold was not approved by the FDA, and it is therefore an unapproved new drug. FDA's Office of Criminal Investigations (OCI) conducted a number of controlled buys of

unapproved modafinil and other unapproved prescription drugs from Mr. Kuiper's websites over approximately 11 years. On most occasions, the drugs were either received by OCI directly from shippers in foreign countries or had packaging indicating that they were manufactured in foreign countries. During subsequent interviews, Mr. Kuiper admitted to investigators that he caused unapproved modafinil to be shipped directly to customers from his overseas suppliers. OCI's purchases from Mr. Kuiper's websites never required a prescription.

As a result of his convictions, FDA sent Mr. Kuiper, by certified mail on October 28, 2021, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Kuiper's convictions for three felony counts under Federal law, specifically for one count of smuggling, one count of conspiracy to smuggle goods into the United States and to introduce into interstate commerce unapproved drugs, and one count of introduction into interstate commerce of unapproved drugs, were for conduct relating to the importation into the United States of any drug or controlled substance, because he knowingly conspired to illegally smuggle modafinil, an unapproved drug and controlled substance, into the United States on multiple occasions and then caused it to be introduced into interstate commerce.

In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Kuiper's offenses and concluded that each felony offense warranted the imposition of a 5-year period of debarment. However, FDA placed significant weight on the cooperation Mr. Kuiper provided to law enforcement. Specifically, upon the execution of a search warrant by FDA's OCI, Mr. Kuiper immediately began to cooperate meaningfully with Federal agents and ceased his own operations.

In light of Mr. Kuiper's assistance, FDA determined that the 5-year debarment periods for each conviction should run concurrently. The proposal informed Mr. Kuiper of the proposed debarment, offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Kuiper

received the proposal and notice of opportunity for a hearing on November 8, 2021. Mr. Kuiper failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. George Kuiper has been convicted of felonies under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offenses should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Kuiper is debarred for a period of 5 years from importing or offering for import any drug into the United States, applicable (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Kuiper is a prohibited act.

Any application by Mr. Kuiper for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA-2021-N-0665 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at <https://www.regulations.gov> or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

Dated: February 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022-04484 Filed 3-2-22; 8:45 am]

BILLING CODE 4146-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2021-N-0918; FDA-2018-N-1967; FDA-2009-D-0268; and FDA-2019-N-3077]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-7726, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at <https://www.reginfo.gov/public/do/PRAMain>. 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Labeling Requirements for Human Prescription Drug and Biological Products	0910-0572	1/31/2025
Biosimilar User Fee Program	0910-0718	1/31/2025
Labeling of Certain Beers Subject to the Labeling Jurisdiction of the FDA	0910-0728	1/31/2025
Obtaining Information to Understand and Challenges and Opportunities Encountered by Compounding Outsourcing Facilities	0910-0883	2/28/2025

Dated: February 23, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022-04409 Filed 3-2-22; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2022-N-0117]

Agency Information Collection Activities; Proposed Collection; Comment Request; Authorization for Medical Products for Use in Emergencies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with FDA Authorization for Medical Products for Use in Emergencies.

DATES: Submit either electronic or written comments on the collection of information by May 2, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 2, 2022. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 2, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2022-N-0117 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Authorization for Medical Products for Use in Emergencies." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper

submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-5733, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information,

before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Emergency Use Authorization of Medical Products

OMB Control Number 0910-0595—Extension

This information collection helps support implementation of Agency policies applicable to the authorization for medical products for use in emergencies under sections 564, 564A, and 564B of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360bbb-3, 360bbb-3a, and 360bbb-3b). For more information regarding emergency use authorization (EUA), visit our website at <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization>. The FD&C Act permits the Commissioner of Food and Drugs (the Commissioner) to authorize the use of unapproved medical products, or unapproved uses of approved medical products, during an emergency declared under section 564 of the FD&C Act. The data to support issuance of an EUA must demonstrate that, based on the totality of the scientific evidence available to the Commissioner, including data from adequate and well-controlled clinical trials (if available), it is reasonable to believe that the product may be effective in diagnosing, treating, or preventing a serious or life-threatening disease or condition (21 U.S.C. 360bbb-3(c)).

Also under section 564 of the FD&C Act, the Commissioner may establish conditions on issuing an authorization that may be necessary or appropriate to protect the public health. These conditions can include requirements to

disseminate or disclose information to healthcare providers or authorized dispensers and product recipients; adverse event monitoring and reporting; data collection and analysis; specific recordkeeping and records access; restrictions on product advertising, distribution, and administration; and limitations on good manufacturing practice requirements. As governed by statute, some conditions are mandatory to the extent practicable for authorizations of unapproved products, and discretionary for authorizations of unapproved uses of approved products. Some conditions may apply to manufacturers of an EUA product, while other conditions may apply to any person who carries out an activity for which the authorization is issued. Sections 564A and 564B of the FD&C Act establish streamlined mechanisms intended to facilitate preparedness and response activities involving certain

FDA approved products without requiring FDA to issue an EUA, and set forth emergency dispensing order and expiration date extension authority. The guidance document entitled, "Emergency Use Authorization of Medical Products and Related Authorities" (January 2017), available for download from our website at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/emergency-use-authorization-medical-products-and-related-authorities>, discusses FDA issuance of Emergency Use Authorizations (EUAs) under section 564 of the FD&C Act; implementation of the emergency use authorities set forth in section 564A of the FD&C Act; reliance on the governmental pre-positioning authority set forth in section 564B of the FD&C Act; and related FDA regulations. As discussed in the guidance document, the specific type

and amount of data needed to support an EUA will vary depending on the nature of the declared emergency and the nature of the candidate product. The guidance document encourages early engagement with FDA, explains mechanisms for communication, and makes content and format recommendations on submitting information to the Agency. The guidance document also recommends that a request for consideration for an EUA include scientific evidence evaluating the product's safety and effectiveness, including the adverse event profile for diagnosis, treatment, or prevention of the serious or life-threatening disease or condition, as well as data and other information on safety, effectiveness, risks and benefits, and (to the extent available) alternatives.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Requests for a substantive amendment to an existing EUA	2,724	2	5,448	45	245,160
Pre-EUA submissions or amendments	2,001	1	2,001	34	68,034
Submitting information required under conditions of authorization	36	3	108	8	864
State and local public health authority submissions required under conditions of authorization for unapproved EUA product	1	1	1	2	2
State and local public health authority requests for Emergency Dispensing Order	1	1	1	2	2
State and local public health authority requests for expiration date extension	1	1	1	20	20
Total			7,560		314,082

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Although we have averaged burden across all respondents, we categorize reporting activity by the type of EUA-related submission: (1) Those who file a request for FDA to issue an EUA and/or a substantive amendment to an EUA that has previously been issued; (2) those who submit a request for FDA to review information/data (i.e., a pre-EUA package) for a candidate EUA product or a substantive amendment to an existing pre-EUA package for preparedness purposes; (3) those who must report on activities related to an unapproved EUA

product (e.g., administering product, disseminating information) who must report to FDA regarding such activity; (4) public health authorities (e.g., State, local) who must report on certain activities (e.g., administering product, disseminating information) related to an unapproved EUA, and public health authorities who submit an expiration date extension request for an approved product; (5) those who request an emergency dispensing order under section 564A; and (6) those who request expiry dating extensions under section

564A. We attribute greater burden to those requests for FDA to review pre-EUA packages submitted by product sponsors than burden we attribute to those submitted by Federal agencies (e.g., Centers for Disease Control and Prevention, the Department of Defense), and have considered other factors that contribute to variability in burden for reporting, including the type of product and whether there is a previously reviewed pre-EUA package or investigational application.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

Records associated with conditions of authorization	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
EUA Holders	648	2	1,296	25	32,400
State and local Public Health Authorities	1	1	1	3	3

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹—Continued

Records associated with conditions of authorization	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Total	1,297	.....	32,403

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

We provide a conservative estimate for respondent recordkeeping, recognizing that the Federal Government performs much of this

activity in conjunction with submissions. We do not include burden for public health authorities who may need to submit emergency dispensing

orders or expiration date extension requests, assuming covered entities already maintain these records for the products they stockpile.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN ¹

Information collection activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Dissemination of required information by EUA Holder or Authorized Stakeholder	635	2	1,270	5	6,350

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Our third-party disclosure estimate is based on the number of EUA holders and authorized stakeholders disseminating information, including fact sheets, advertising, and promotional materials.

We have increased our burden estimate for the information collection to reflect the increase in submissions we have received over the last 3 years.

Dated: February 28, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022-04496 Filed 3-2-22; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357-6400. For information on HRSA’s role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443-6593, or visit our website at: <http://www.hrsa.gov/vaccinecompensation/index.html>.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each

condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that “[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register.**” Set forth below is a list of petitions received by HRSA on January 1, 2022, through January 31, 2022. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master “shall afford all interested persons an opportunity to submit relevant, written information” relating to the following:

1. The existence of evidence “that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,” and

2. Any allegation in a petition that the petitioner either:

a. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury

Table but which was caused by” one of the vaccines referred to in the Table, or

b. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine” referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court’s caption (*Petitioner’s Name v. Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,
Administrator.

List of Petitions Filed

1. Christopher Bost, Hamburg, Pennsylvania, Court of Federal Claims No: 22–0001V
2. Alexander Lau, Pittsburgh, Pennsylvania, Court of Federal Claims No: 22–0002V
3. Brian Peterson, Phoenix, Arizona, Court of Federal Claims No: 22–0007V
4. Elizabeth Cantrell, Nashville, Tennessee, Court of Federal Claims No: 22–0008V
5. Mark Bezzek, Sanford, North Carolina, Court of Federal Claims No: 22–0009V
6. Elaina Bouw, Phoenix, Arizona, Court of Federal Claims No: 22–0011V
7. William Rash, Tewksbury, Massachusetts, Court of Federal Claims No: 22–0012V
8. Daniel Tetting, St. Paul, Minnesota, Court of Federal Claims No: 22–0016V
9. Joseph Karam, Portland, Oregon, Court of Federal Claims No: 22–0017V
10. Molly Converse, San Antonio, Texas, Court of Federal Claims No: 22–0019V
11. Miriam San Pedro, Reseda, California, Court of Federal Claims No: 22–0022V
12. Michael Cascio, Charleston, South Carolina, Court of Federal Claims No: 22–0024V
13. Melissa Ogea, Phoenix, Arizona, Court of Federal Claims No: 22–0025V
14. Albert Miller, Kinder, Louisiana, Court of Federal Claims No: 22–0026V
15. Gary W. Cobb, Portland, Oregon, Court of Federal Claims No: 22–0028V
16. Monica Reid, Largo, Maryland, Court of Federal Claims No: 22–0029V
17. Jacqueline Nyarko, Houston, Texas, Court of Federal Claims No: 22–0030V
18. Beverly Luckner and Margaret Sutto on behalf of the Estate of Eleanor Vlack, Deceased, Venice, Florida, Court of Federal Claims No: 22–0031V
19. China Cicarelli, New York, New York, Court of Federal Claims No: 22–0032V
20. Sherry McNey, Loma Linda, California, Court of Federal Claims No: 22–0034V
21. Jon Tulloch, Brewster, Massachusetts, Court of Federal Claims No: 22–0035V
22. Caleb Savoie, Metairie, Louisiana, Court of Federal Claims No: 22–0037V
23. Kimberly Pendleton, East Norriton, Pennsylvania, Court of Federal Claims No: 22–0039V
24. Kathleen Trusko, Philadelphia, Pennsylvania, Court of Federal Claims No: 22–0042V
25. Brianna Aguilar, Omaha, Nebraska, Court of Federal Claims No: 22–0043V
26. Catherine Gabel, Baker, Louisiana, Court of Federal Claims No: 22–0044V
27. Jill Gardner, Henderson, Nevada, Court of Federal Claims No: 22–0045V
28. Scott Barber, Wellesley, Massachusetts, Court of Federal Claims No: 22–0050V
29. Ewa Konik and Roman Juengling on behalf of M. K., Sioux Falls, South Dakota, Court of Federal Claims No: 22–0051V
30. Denise Watts, Petal, Mississippi, Court of Federal Claims No: 22–0054V
31. Edith Purcell, Somerset, Kentucky, Court of Federal Claims No: 22–0055V
32. Ellsworth Ramsdell, Keizer, Oregon, Court of Federal Claims No: 22–0057V
33. Ryan Nelson and Hollie Nelson on behalf of D. N., Pocatello, Idaho, Court of Federal Claims No: 22–0063V
34. Fay M. Haas, Beachwood, Ohio, Court of Federal Claims No: 22–0065V
35. Lanette Jackson, Suwanee, Georgia, Court of Federal Claims No: 22–0066V
36. Sandra Canales, Merritt Island, Florida, Court of Federal Claims No: 22–0067V
37. Deborah Derrick, Benton, Pennsylvania, Court of Federal Claims No: 22–0068V
38. Jennifer Beretta, Salinas, California, Court of Federal Claims No: 22–0069V
39. Sharon Bailey, Waterville, Ohio, Court of Federal Claims No: 22–0070V
40. Dianne Somerville, Lehigh Acres, Florida, Court of Federal Claims No: 22–0071V
41. Ashley Middleton, Charlotte, North Carolina, Court of Federal Claims No: 22–0073V
42. Deborah Scott, Phoenix, Arizona, Court of Federal Claims No: 22–0074V
43. Andre D. Robinson, Boscobel, Wisconsin, Court of Federal Claims No: 22–0075V
44. Jodi Fields, Florence, Kentucky, Court of Federal Claims No: 22–0076V
45. Tamara Defonzo on behalf of C.S., Phoenix, Arizona, Court of Federal Claims No: 22–0077V
46. Robert Phoneprasith, Plymouth, Wisconsin, Court of Federal Claims No: 22–0079V
47. Jonnie Brown, Gainesville, Georgia, Court of Federal Claims No: 22–0080V
48. Alfred Marshall, Corona, California, Court of Federal Claims No: 22–0081V
49. Audrey Smith on behalf of the Estate of Larry Smith, Deceased, Bagley, Minnesota, Court of Federal Claims No: 22–0082V
50. Peter Evan Kenseth, Richmond, Virginia, Court of Federal Claims No: 22–0084V
51. Kelly Wicoff on behalf of the Estate of Randolph Kester, Seattle, Washington, Court of Federal Claims No: 22–0085V
52. Samantha Klagenberg and Brandon Klagenberg on behalf of M.K., Phoenix, Arizona, Court of Federal Claims No: 22–0086V
53. Melissa Bartlett, Woodbridge, Illinois, Court of Federal Claims No: 22–0087V
54. Christina Cordell on behalf of H.C., Phoenix, Arizona, Court of Federal Claims No: 22–0088V
55. Jolene Wiltz, Sabetha, Kansas, Court of Federal Claims No: 22–0089V
56. Rebecca Sullivan on behalf of A.S., Phoenix, Arizona, Court of Federal Claims No: 22–0091V
57. Vincent Mancuso, Woodbridge, Illinois, Court of Federal Claims No: 22–0093V
58. Rae Rowe, Beaver, Pennsylvania, Court of Federal Claims No: 22–0094V
59. Colleen Holveck, Avondale, Pennsylvania, Court of Federal Claims No: 22–0095V
60. Geoffrey Donaldson, Millerton, New York, Court of Federal Claims No: 22–0096V

[FR Doc. 2022–04476 Filed 3–2–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; MCH Jurisdictional Survey Instrument for the Title V MCH Block Grant Program, OMB No. 0906–0042—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with 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 April 4, 2022.

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 search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the acting HRSA Information Collection Clearance Officer at paperwork@hrsa.gov or call (301) 443-9094.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Maternal and Child Health (MCH) Jurisdictional Survey Instrument for the Title V MCH Block Grant Program, OMB No. 0906-0042—Extension.

Abstract: The purpose of the title V MCH Block Grant is to improve the health of the Nation’s mothers, infants, children, including children with special health care needs, and their families by creating federal/state partnerships that provide each state/jurisdiction with needed flexibility to respond to its individual MCH population needs. Unique to the MCH Block Grant is a commitment to performance accountability, while assuring state flexibility. Utilizing a three-tiered national performance measure framework, which includes National Outcome Measures, National Performance Measures, and Evidence-Based and -Informed Strategy Measures, State Title V programs report annually on their performance relative to the selected national performance and outcome measures. Such reporting enables the state and federal program offices to assess the progress achieved in key MCH priority areas and to document Title V program accomplishments.

By legislation (section 505(a) and 506(a) of title V of the Social Security Act), the MCH Block Grant Application/Annual Report must be developed by, or in consultation with, state MCH health agencies. In establishing state reporting requirements, HRSA’s Maternal and Child Health Bureau considers the availability of national data from other federal agencies. Data for the national performance and outcome measures are pre-populated for states in the title V Information System. National data sources identified for the National Performance Measures and National Outcome Measures in the MCH Block Grant program seldom include data from the Title V jurisdictions, with the exception of the District of Columbia. The eight remaining jurisdictions (*i.e.*, American Samoa, Federated States of

Micronesia, Guam, Marshall Islands, Northern Mariana Islands, Palau, Puerto Rico, and U.S. Virgin Islands) have limited access to significant data and MCH indicators, with limited capacity for collecting these data.

Sponsored by HRSA’s Maternal and Child Health Bureau, the MCH Jurisdictional Survey is designed to produce data on the physical and emotional health of mothers and children under 18 years of age in the following eight jurisdictions—American Samoa, Federated States of Micronesia, Guam, Marshall Islands, Northern Mariana Islands, Palau, Puerto Rico, and Virgin Islands. More specifically, the MCH Jurisdictional Survey collects information on factors related to the well-being of children, including health status, visits to health care providers, health care costs, and health insurance coverage. In addition, the MCH Jurisdictional Survey collects information on factors related to the well-being of mothers, including health risk behaviors, health conditions, and preventive health practices. Collecting this data will enable the jurisdictions to meet federal performance reporting requirements and to demonstrate the impact of Title V funding relative to MCH outcomes for the U.S. jurisdictions in reporting on their unique MCH priority needs.

The MCH Jurisdictional Survey was designed based on information-gathering activities with Title V leadership and program staff in the jurisdictions, experts at the Centers for Disease Control and Prevention and other organizations with relevant data collection experience. Survey items are based on the National Survey of Children’s Health; the Behavioral Risk Factor Surveillance System; the Youth Behavior Surveillance System; and selected other federal studies. The Survey is designed as a core questionnaire to be administered across all jurisdictions with a supplemental set of survey questions customized to the needs of each jurisdiction.

A 60-day notice was published in the **Federal Register**, 86 FR 50365 (September 8, 2021). There were no public comments.

Need and Proposed Use of the Information: Data from the MCH Jurisdictional Survey will be used to measure progress on national performance and outcome measures under the Title V MCH Block Grant Program. This survey instrument is critical in order to collect information on factors related to the well-being of all mothers, children, and their families in the jurisdictional Title V programs, and which address their unique MCH needs.

HRSA is asking to update the previously approved question and response options for, “What is this child’s race?” The updated question would ask, “What is this child’s race and ethnicity?” Updated response options would include an expanded list of races and ethnicities prevalent in the Pacific Basin (specifically: Tongan, Saipanese, Mortlockese, Kosraen, Carolinian, Palauan, Pohnpeian, Yapese, Chuukese, and Marshallese). These changes are based on feedback from the program staff in the Jurisdictions and interviewers who indicated that some respondents were unsure about how to answer since they did not identify with any of the races and ethnicities listed, as well as on review of the data from 2019–2022. Participants in the Pacific Basin often struggled to choose a response from the available list and would default to selecting “other Pacific Islander, please specify.” Furthermore, the lack of additional race and ethnicity detail made it difficult for Jurisdictional title V Programs to properly analyze data and apply results to title V programming. The additional response options represent the most frequent responses received from participants to the “other Pacific Islander, please specify” item. This question is asked one time for each child included in the screener (questions A6, A17, A28, and A39).

1. *Is this child of Hispanic, Latino, or Spanish origin?*

1. No, not of Hispanic, Latino, or Spanish origin
2. Yes, Mexican, Mexican American, Chicano
3. Yes, Puerto Rican
4. Yes, Cuban
5. Yes, another Hispanic, Latino, or Spanish origin.

Please specify _____

2. *What is this child’s race or ethnicity?*
Select one or more:

1. White
 2. Black or African American
 3. American Indian or Alaska Native
- Please specify _____
4. Asian Indian
 5. Chinese
 6. Filipino
 7. Japanese
 8. Korean
 9. Vietnamese
 10. Other Asian

Please specify _____

11. Native Hawaiian
12. Guamanian or Chamorro
13. Samoan
14. Tongan
15. Saipanese
16. Mortlockese
17. Kosraen
18. Carolinian
19. Palauan
20. Pohnpeian
21. Yapese

- 22. Chuukese
 - 23. Marshallese
 - 24. Other Pacific Islander
- Please specify _____

Likely Respondents: The respondent universe is women age 18 or older who live in one of the eight targeted U.S. jurisdictions (Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, American Samoa, Palau, Marshall Islands, or Federated States of

Micronesia) and who are mothers or guardians of at least one child aged 0–17 years living in the same household.

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.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Burden hours per form	Total burden hours
Adult Parents—Puerto Rico	Screener	2,480	1	2,480	0.03	74.40	299.40
	Core	250	1	250	0.83	207.50	
	Jurisdiction Module	250	1	250	0.07	17.50	
Adult Parents—U.S. Virgin Islands	Screener	2,153	1	2,153	0.03	64.59	289.59
	Core	250	1	250	0.83	207.50	
	Jurisdiction Module	250	1	250	0.07	17.50	
Adult Parents—Guam	Screener	684	1	684	0.03	20.52	245.52
	Core	250	1	250	0.83	207.50	
	Jurisdiction Module	250	1	250	0.07	17.50	
Adult Parents—American Samoa	Screener	426	1	426	0.03	12.78	232.78
	Core	250	1	250	0.83	207.50	
	Jurisdiction Module	250	1	250	0.05	12.50	
Adult Parents—Federated States of Micronesia	Screener	339	1	339	0.03	10.17	230.17
	Core	250	1	250	0.83	207.50	
	Jurisdiction Module	250	1	250	0.05	12.50	
Adult Parents—Marshall Islands	Screener	284	1	284	0.03	8.52	236.02
	Core	250	1	250	0.83	207.50	
	Jurisdiction Module	250	1	250	0.08	20.00	
Adult Parents—Northern Mariana Islands	Screener	470	1	470	0.03	14.10	241.60
	Core	250	1	250	0.83	207.50	
	Jurisdiction Module	250	1	250	0.08	20.00	
Adult Parents—Palau	Screener	467	1	467	0.03	14.01	226.51
	Core	250	1	250	0.83	207.50	
	Jurisdiction Module	250	1	250	0.02	5.00	
Total		7,303		7,303			2,001.59

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. 2022-04413 Filed 3-2-22; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Institutional Development Award (IDeA) Program Infrastructure for Clinical and Translational Research (IDeA-CTR) (U54).

Date: March 30, 2022.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Science, Natcher Bldg. 45, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office Scientific Review, National Institute of General Medical Sciences, National Institutes Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301-594-2763, seetharams@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 25, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022-04425 Filed 3-2-22; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Office of the Director, National Institutes of Health; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Office of Research Infrastructure Programs (ORIP) Special Emphasis Panel: Applications for Scientific Conferences.

Date: April 6, 2022.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301-435-0229, kenneth.ryan@nih.hhs.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 25, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022-04424 Filed 3-2-22; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Clinical Neuroplasticity and Neurotransmitters.

Date: March 23, 2022.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, 301-480-9069, cbackman@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Glioma, Multiple Sclerosis, and Neuroinflammation.

Date: March 25, 2022.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435-1246, edwardss@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Alzheimer's Disease, Mild Cognitive Impairment and Cognitive Aging.

Date: March 25, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301-594-3163, champoux@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 19-232: NIGMS Mature Synchrotron Resources for Structural Biology (P50).

Date: March 29, 2022.

Time: 9:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301)451-1323, assamunu@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA-HD-22-008: Autism Centers of Excellence: Centers (P50).

Date: March 30-31, 2022.

Time: 9:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435-3566, mulky@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 25, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022-04426 Filed 3-2-22; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY**U.S. Immigration and Customs Enforcement**

[Docket No. ICEB-2022-0003]

RIN 1653-ZA24

Employment Authorization for South Sudanese F-1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Humanitarian Crisis in South Sudan

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) is suspending certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is the Republic of South Sudan (South Sudan), regardless of country of birth (or individuals having no nationality who last habitually resided in South Sudan), and who are experiencing severe economic hardship as a direct result of the humanitarian crisis in South Sudan. The Secretary is taking action to provide relief to these South Sudanese students who are lawful F–1 nonimmigrant students so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 nonimmigrant student status. The Department of Homeland Security (DHS) will deem an F–1 nonimmigrant student who receives employment authorization by means of this notice to be engaged in a “full course of study” for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

DATES: This F–1 notice is effective March 3, 2022, through November 3, 2023.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: sevp@ice.dhs.gov, telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at <https://www.ice.gov/sevis/>.

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary is exercising his authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is South Sudan, regardless of country of birth (or individuals having no nationality who last habitually resided in South Sudan), who are present in the United States in lawful F–1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of the humanitarian crisis in South Sudan due to many years of armed conflict leading to the destruction of people’s

livelihoods. Effective with this publication, suspension of the employment limitations is available through November 3, 2023, for those who are in lawful F–1 nonimmigrant status. DHS will deem an F–1 nonimmigrant student granted employment authorization through the notice to be engaged in a “full course of study” for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.¹ See 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

- (1) Are a citizen of South Sudan regardless of country of birth (or an individual having no nationality who last habitually resided in South Sudan);
- (2) Were lawfully present in the United States in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i), on the date of publication of this notice;
- (3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;
- (4) Are maintaining F–1 nonimmigrant status; and
- (5) Are experiencing severe economic hardship as a direct result of the humanitarian crisis in South Sudan.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school in grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

¹ Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a “full course of study,” see 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of November 3, 2023, provided the student satisfies the minimum course load requirements in this notice. DHS also considers students who engage in online coursework pursuant to U.S. Immigration and Customs Enforcement (ICE) coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. See ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, <https://www.ice.gov/coronavirus> (last visited Feb. 2022).

Why is DHS taking this action?

DHS is taking action to provide relief to South Sudanese F–1 nonimmigrant students experiencing severe economic hardship as a result of the humanitarian crisis in South Sudan. DHS has reviewed country conditions in South Sudan. Based on the review, including input received from the U.S. Department of State (DOS), DHS is taking action to allow eligible F–1 nonimmigrant students from South Sudan, to request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

Since February 2020, limited implementation of the September 2018 Revitalized Agreement on the Resolution of the Conflict (R–ARCSS) “has hindered improvements in the protection of civilians and prospects for long-term peace” in South Sudan.² Moreover, ongoing political disputes and disagreements between the two main signatories—the Sudan People’s Liberation Movement (SPLM), led by the President Salva Kiir Mayardit, and the Sudan People’s Liberation Movement–Army in Opposition (SPLM/A–IO), led by the First Vice-President, Riek Machar Teny—“has widened existing political, military and ethnic divisions in the country and has led to multiple incidents of violence” between the two parties.³ In addition, political divisions among the non-signatories⁴ to the R–ARCSS have made it more difficult to negotiate a comprehensive peace.⁵ Moreover, the SPLM/A–IO has also begun to break apart and new splinter groups have formed,⁶ resulting in increased violence.⁷

In June 2021, the United Nations (UN) reported that “the overall

² Rep. of the Panel of Experts on South Sudan (2020), transmitted by Letter dated 14 April 2021 from the Panel of Experts on South Sudan Established Pursuant to Resolution 2206 (2015) Concerning South Sudan to the President of the Security Council, at 2, UN Doc. S/2021/365 (Apr. 15, 2021) (hereinafter Panel of Experts on South Sudan).

³ *Id.*

⁴ Previously united under one umbrella group—the South Sudan Opposition Movements Alliance—non-signatories of the R–ARCSS have divided into two factions, one led by General Thomas Cirillo Swaka, the leader of the National Salvation Front (NAS), and another led by General Pagan Amum and General Paul Malong Awan Anei. See *id.* at 9.

⁵ See *id.*

⁶ *Id.* at 11.

⁷ Dan Watson, *Surface Tension: ‘Communal’ Violence and Elite Ambitions in South Sudan*, Armed Conflict Location & Event Data, (Aug. 19, 2021), <https://acleddata.com/2021/08/19/surface-tension-communal-violence-and-elite-ambitions-in-south-sudan/>.

implementation of the R-ARCSS is progressing slowly.”⁸ Political gridlock over implementation of the political and security aspects of the R-ARCSS have also contributed to insecurity in South Sudan.⁹ The UN further assessed that weak or absent State governance has allowed “perennial communal and ethnic cleavages,” while entrenched insecurity contributes to a vicious cycle of livestock raiding and subsequent food insecurity. A weakened rule of law and flagging economic conditions have resulted in increased criminality and the targeting of humanitarian workers.¹⁰

South Sudan continues to face increased violence¹¹ from government security forces and armed groups.¹² In 2020, the United Nations (UN) and international organizations reported on “widespread killings, mutilations, and sexual violence, disproportionately committed by government forces but also by the National Salvation Front (NAS), a key opposition group.”¹³ In February 2021, the UN Commission on Human Rights in South Sudan noted that armed clashes at the local level also resulted in the mass displacement of the civilian population, particularly women and girls.¹⁴ Children are among those feeling the greatest impact of this violence, exposing them to protection risks and life-threatening diseases.¹⁵ Moreover, sexual violence—including rape, gang rape, abduction, sexual slavery, and sexual mutilation remain “consistent features of the conflict in South Sudan since 2013, and are now being replicated in conflict at the local level.”¹⁶

⁸ UN Security Council, *Marking a Decade of Independence, South Sudan Faces Slow Progress, Lingering Violence*, Secretary-General’s Special Representative Tells Security Council, UN Office for the Coordination of Humanitarian Affairs (OCHA) Services, June 22, 2021. <https://reliefweb.int/report/south-sudan/marking-decade-independence-south-sudan-faces-slow-progress-lingering-violence>.

⁹ Panel of Experts on South Sudan, *supra* note 3, at 2.

¹⁰ Marking a Decade of Independence, South Sudan Faces Slow Progress, Lingering Violence, Secretary-General’s Special Representative Tells Security Council, *supra*.

¹¹ *Id.*

¹² Panel of Experts on South Sudan, *supra* note 3 at 15.

¹³ U.S. Dep’t of State, *2020 Country Reports on Human Rights Practices: South Sudan* (Mar. 31, 2021). <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/south-sudan/>.

¹⁴ Rep. of the Comm. on Human Rights in South Sudan, at 14, UN Doc. A/HRC/46/53 (Feb. 4, 2021). https://www.ecoi.net/en/file/local/2046934/A_HRC_46_53_E.pdf.

¹⁵ UN Children’s Fund (UNICEF), *South Sudan Humanitarian Situation Report No. 163: 1–30*, UNICEF, Dec. 30, 2021, pg. 2. UNICEF South Sudan Humanitarian Situation Report No. 163: 1–30 November 2021—South Sudan | ReliefWeb.

¹⁶ Rep. of the Comm. on Human Rights in South Sudan, *supra* note 13, at 14.

In addition, humanitarian organizations continue to face security and bureaucratic barriers that affect the delivery and access of humanitarian aid and pose “serious personal risks to aid workers.”¹⁷ Access is difficult due to flooding, violence, and Coronavirus Disease 2019 (COVID-19) restrictions. As a result, South Sudan is also facing “one of the direst food crises the country has faced since its independence in 2011.”¹⁸ Moreover, chronic food shortages, a deepening economic crisis, insecurity, and limited agricultural production led to high levels of acute malnutrition.¹⁹ South Sudan’s health care infrastructure remains inadequate.²⁰ Facilities are limited and often inaccessible and facing staffing shortages amongst ongoing insecurity and violence.²¹

The United States Agency for International Development (USAID) estimates that over 8 million people in South Sudan need humanitarian assistance and 2 million people are internally displaced. In addition, over 800,000 people have been affected by floods and more than 2 million are refugees in neighboring countries.²²

The lack of adequate financial resources and logistical support for the unification, training, and deployment of the South Sudan armed forces, as outlined in the R-ARCSS, remains a significant security challenge.²³ A key component of the R-ARCSS is the long-term garrisoning (cantonment), registration, screening, selection, training and redeployment of opposition forces and the creation of a unified army of 83,000 soldiers. South Sudanese military cantonment sites and training centers²⁴ have made little progress in establishing a unified force, further contributing to a security vacuum in the

¹⁷ Panel of Experts on South Sudan, *supra* note 3, at 16.

¹⁸ *Id.* at 15.

¹⁹ UN Office for the Coordination of Humanitarian Affairs (UNOCHA), *South Sudan Humanitarian Fund Annual Report 2020*, July 6, 2021, pg. 7. <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-fund-annual-report-2020>.

²⁰ World Health Organization (WHO), *South Sudan—Strengthening primary health care in fragile settings*, WHO Newsroom, May 20, 2021. <https://www.who.int/news-room/feature-stories/detail/south-sudan-2021>.

²¹ *Id.*

²² U.S. Agency for International Development, *South Sudan—Crisis, Fact Sheet #2 Fiscal Year 2022*, OCHA Services, Jan. 19, 2022. <https://reliefweb.int/report/south-sudan/south-sudan-complex-emergency-fact-sheet-2-fiscal-year-fy-2022>.

²³ Report of the Commission on Human Rights in South Sudan, *supra* note 13, at 4.

²⁴ Report of the Commission on Human Rights in South Sudan, UN Doc. A/HRC/43/56 Jan. 31, 2020, pg. 6. https://www.ecoi.net/en/file/local/2025863/A_HRC_43_56_E.pdf.

country.²⁵ Security forces in the few cantonment sites often lack access to basic services, such as food, water, sanitation and health care.²⁶ In addition, the proliferation and availability of small amounts of ammunition across South Sudan²⁷ has “enabled armed groups not associated with government security forces, such as local militias and cattle-raiding groups, to perpetuate instability” in the country.²⁸

DOS noted in its 2020 Country Report on Human Rights Practices for South Sudan that there were reports that the government, or its agents, committed numerous arbitrary or unlawful killings. Likewise, security forces, opposition forces, armed militias affiliated with the government and the opposition, and ethnically based groups reportedly were also responsible for widespread extrajudicial killings.²⁹

Moreover, in 2020, ongoing violence in Jonglei and the Greater Pibor Administration Area was “the worst recorded since the outbreak of the national conflict in South Sudan in December 2013, with waves of attacks and reprisals that left hundreds of South Sudanese women, men and children dead, maimed or destitute.”³⁰ In February 2021, the UN assessed that “gross human rights violations and abuses amounting to serious violations of international humanitarian law were committed in the context of localized conflicts by armed militias affiliated to the primary parties in conflict—the SSPDF [South Sudan People’s Defence Forces] and SPL[M]A-IO.”³¹ In 2021, Upper Nile, Warrap, Lakes, Central Equatoria, and Western Equatoria states were particularly affected by violence “resulting in displacement, increased protection risks and rights violations, as well as diminished humanitarian access.”³²

Violence Against Children

Children in South Sudan continued to be victims of what the Office of the Special Representative of the Secretary General for Children and Armed

²⁵ Rep. of the Comm. on Human Rights in South Sudan, *supra* note 13, at 3 (Feb. 4, 2021).

²⁶ *Id.* at 4.

²⁷ Panel of Experts on South Sudan, *supra* note 3, at 21.

²⁸ *Id.*

²⁹ 2020 Country Reports on Human Rights Practices (<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/>): South Sudan, *supra* note 12.

³⁰ Rep. of the Comm. on Human Rights in South Sudan *supra* note 13, at 7.

³¹ *Id.* at 9.

³² UN Security Council, *Situation in South Sudan*, UN Doc. S/2021/784, Sept. 9, 2021, pg. 4. https://www.ecoi.net/en/file/local/2060682/S_2021_784_E.pdf.

Conflict refers to as “grave violations” against children,³³ including forced recruitment, abduction, maiming and killing, and sexual violence.³⁴ According to the United Nations Security Council’s 2021 Children and Armed Conflict in South Sudan report, children were recruited by the SPLM/A–IO, the SSPDF, and the South Sudan National Police Service.³⁵ In addition, hundreds of girls and boys continue to be abducted in South Sudan³⁶ for forced labor and/or forced military recruitment, and increased sexual violence.³⁷ Child abuse, including sexual abuse, was reportedly also widespread in South Sudan.³⁸ Child rape occurred frequently in the context of child, early, and forced marriage, and within the commercial sex industry in urban centers; armed groups also perpetrated it.³⁹

Sexual and Gender-Based Violence

Sexual and gender-based violence remains high. As of September 2020, South Sudan had seen an estimated 88 percent increase in the number of women victims of conflict-related sexual violence since the previous quarter and a 119 percent rise in the number of abductions since the previous quarter.⁴⁰

In addition, rural communities often abducted women and children during cattle raids.⁴¹ Girls who are abducted have been reportedly “forced into sexual slavery, tortured and repeatedly

gang raped.”⁴² Perpetrators of forced marriage and sexual violence include security forces, community-based militias, civil defense groups, and other armed groups.⁴³

Food Insecurity and Floods

South Sudan remains one of the most food-insecure countries in the world.⁴⁴ The overall food security situation deteriorated towards the end of 2020.⁴⁵ This deteriorating security situation and COVID–19-related restrictions have hampered humanitarian organizations’ ability to deploy and respond to medical and other emergency needs in the area.⁴⁶ Between April and July 2021, an estimated 7.2 million people, 60 percent of the population, faced high levels of acute food insecurity.⁴⁷ Malnutrition in particular remains a pressing issue in South Sudan, with approximately 1.9 million women and children acutely malnourished.⁴⁸ Malnutrition levels among children under five years of age are above emergency thresholds in many parts of the country, and 1.4 million children are estimated to be acutely malnourished.⁴⁹ The main factors driving food insecurity and malnourishment are the ongoing conflict, flooding, and COVID–19.⁵⁰ Moreover, COVID–19 mitigation efforts also disrupted access to supply chains for commercial and humanitarian assistance, further affecting food insecurity.⁵¹

Flooding has also taken its toll. In October 2021, the World Food Programme reported that South Sudan faced a third year of unprecedented flooding.⁵² The flooding was exacerbated by standing water from major floods in the previous two years,

most of which had not fully receded.⁵³ The most recent flooding has led to “widespread displacement, destruction of livelihoods and contamination of water sources, compounding existing insecurity issues in many regions.”⁵⁴ The floods also destroyed crops and loss of livestock and created a breeding ground for life-threatening waterborne diseases, including typhoid and cholera.⁵⁵

Healthcare and COVID–19

Access to healthcare is an issue especially during the COVID–19 pandemic. In August 2020, the United Nations High Commissioner for Refugees (UNHCR) reported that “about 56 percent of South Sudan’s population does not have access to primary healthcare services.”⁵⁶ In addition, less than 2 percent of South Sudan’s national budget is spent on healthcare,⁵⁷ resulting in poorly equipped health facilities with limited staff.⁵⁸ South Sudan also continues to face “regular outbreaks of infectious diseases like measles, water-borne diseases such as diarrhea and Hepatitis E virus, and vector-borne diseases like malaria and yellow fever,” in addition to the impact of the COVID–19 pandemic.⁵⁹

Economic Situation

According to the World Bank, South Sudan is facing “concurrent setbacks in the economy” due to rising poverty, food insecurity and a resurgence of

³³ To better monitor, prevent, and end these attacks, the United Nations Security Council has identified and condemned six grave violations against children in times of war: Killing and maiming of children; recruitment or use of children in armed forces and armed groups; attacks on schools or hospitals; rape or other grave sexual violence; abduction of children; and denial of humanitarian access for children. Office of the Special Representative of the Secretary General for Children and Armed Conflict, *The Six Grave Violations*, UN, <https://childrenandarmedconflict.un.org/six-grave-violations/> (last visited on Feb. 9, 2022).

³⁴ UN Security Council, *Children and Armed Conflict in South Sudan*, UN Doc. A/75/873–S/2021/437, May 6, 2021, pg. 21. https://www.un.org/ga/search/view_doc.asp?symbol=S/2021/437&Lang=E&Area=UNDOC.

³⁵ *Id.*

³⁶ Rep. of the Comm. on Human Rights in South Sudan, *supra* note 13, at 7 (Feb. 4, 2021).

³⁷ Human Rights Division United Nations Mission in South Sudan, *Brief on Violence Affecting Civilians*, Sept. 1, 2021, pg. 2. https://unmiss.unmissions.org/sites/default/files/unmiss_hrd_third_quarterly_brief_2021.pdf.

³⁸ 2020 Country Reports on Human Rights Practices, *supra*, sec. 5.

³⁹ *Id.*

⁴⁰ Rep. of the Comm. on Human Rights in South Sudan, *supra* note 13, at 13 (Feb. 4, 2021).

⁴¹ 2020 Country Reports on Human Rights Practices, *supra*, section 5.

⁴² Rep. of the Comm. on Human Rights in South Sudan, *supra* note 13, at 7.

⁴³ UN Refugee Agency, *Position on Returns to South Sudan*, UNHCR, October 2021, pg. 7. <https://www.refworld.org/pdfid/617676f04.pdf>.

⁴⁴ South Sudan Humanitarian Fund Annual Report 2020, *supra*, pg. 7.

⁴⁵ *Id.*

⁴⁶ European Commission’s Directorate-General for European Civil Protection and Humanitarian Aid Operations, *South Sudan—Violence, Floods, Displacement in Jonglei*, ECHO Daily Flash, August 11, 2020. <https://reliefweb.int/report/south-sudan/south-sudan-violence-floods-displacement-jonglei-dg-echo-ocha-media-echo-daily>.

⁴⁷ Situation in South Sudan, *supra*, pg. 6.

⁴⁸ World Food Programme (WFP), *South Sudan Situation Report*, WFP Situation Report No. 296, October 29, 2021, pg. 1. <https://reliefweb.int/report/south-sudan/wfp-south-sudan-situation-report-296-29-october-2021>.

⁴⁹ Situation in South Sudan, *supra*, pg. 6.

⁵⁰ South Sudan Humanitarian Fund Annual Report 2020, *supra*, pg. 7.

⁵¹ *Id.*

⁵² WFP South Sudan Situation Report, *supra*, pg. 1.

⁵³ REACH Initiative, *South Sudan: Flooding Trends in Counties of Particular Concern of Food Insecurity*, December 2021, Situation Report, Jan. 11, 2022, pg. 2. <https://reliefweb.int/report/south-sudan/south-sudan-flooding-trends-counties-particular-concern-food-insecurity-december>.

⁵⁴ *Id.* at 1.

⁵⁵ Rep. of the Comm. on Human Rights in South Sudan, *supra* note 13, at 11.

⁵⁶ UN Human Rights Office of the High Commissioner, *Renewed Violence and Delayed Implementation of the Peace Agreement Severely Threaten Peace and Stability in South Sudan*, UN Experts Note, UNHCR Press Release, August 14, 2020. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26167&LangID=E>.

⁵⁷ World Health Organization, *South Sudan—Strengthening Primary Health Care in Fragile Settings*, WHO Newsroom, May 20, 2021. <https://www.who.int/news-room/feature-stories/detail/south-sudan-2021>.

⁵⁸ UNOCHA, *South Sudan Humanitarian Needs Overview 2021*, Humanitarian Programme Cycle 2021, Jan. 2021, pg. 12. https://www.ecoi.net/en/file/local/2045425/south_sudan_2021_humanitarian_needs_overview.pdf.

⁵⁹ World Health Organization, *Strengthening Public Health Surveillance And Response Using the Third Edition Integrated Disease Surveillance and Response Guidelines in South Sudan*, WHO Press Release, November 27, 2021. <https://reliefweb.int/report/south-sudan/strengthening-public-health-surveillance-and-response-using-third-edition>.

conflict.⁶⁰ Moreover, falling global oil prices have also affected South Sudan's oil revenues.⁶¹ South Sudan's economy is heavily oil-dependent, with oil accounting for 90 percent of government revenue and nearly all exports.⁶² This situation has caused a "great percentage of South Sudanese people to lose their sources of livelihood and has left some communities facing catastrophic needs."⁶³ Moreover, urgent and essential measures to manage the COVID-19 pandemic, "worsened economic conditions, disrupting livelihoods and affecting vulnerable households' access to markets, food and adequate income."⁶⁴

Approximately 107 F-1 nonimmigrant students from South Sudan are enrolled in courses at SEVP-certified U.S. academic institutions as of January 13, 2022. Given the extent of the humanitarian crisis in South Sudan, affected students whose primary means of financial support comes from South Sudan may need to be exempt from the normal student employment requirements to continue their studies in the United States. The humanitarian crisis has made it unfeasible for many students to safely return to South Sudan for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

What is the minimum course load requirement to maintain valid F-1 nonimmigrant status under this notice?

Undergraduate F-1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term.⁶⁵ A graduate-level F-1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of

⁶⁰ The World Bank, *South Sudan Economic Update, June 2021: Pathways to Sustainable Food Security*, OCHA Services, July 2, 2021. <https://reliefweb.int/report/south-sudan/south-sudan-economic-update-june-2021-pathways-sustainable-food-security>.

⁶¹ *Id.*

⁶² South Sudan Humanitarian Needs Overview 2021 *supra*, pg. 12.

⁶³ South Sudan Economic Update, June 2021: Pathways to Sustainable Food Security, *supra*.

⁶⁴ Food and Agriculture Organization of the United Nations, *South Sudan Humanitarian Response Plan*, OCHA Services, May 2021, pg. 2. <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-response-plan-2021>.

⁶⁵ Undergraduate F-1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a "full course of study." See 8 CFR 214.2(f)(6)(i)(B).

three semester or quarter hours of instruction per academic term. See 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F-1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless the course of study is in a language study program.⁶⁶ See 8 CFR 214.2(f)(6)(i)(G). An F-1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain "class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation," as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

May an eligible F-1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. An F-1 nonimmigrant student who is a South Sudan citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in South Sudan), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i)(A) and (B) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F-1 nonimmigrant student may benefit without having to apply for a new Form I-766, Employment Authorization Document (EAD). To benefit from this notice, the F-1 nonimmigrant student must request that the designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information

⁶⁶ DHS considers students who are compliant with ICE coronavirus disease 2019 (COVID-19) guidance for nonimmigrant students to be in compliance with regulations while such COVID-19 guidance remains in effect. See ICE Guidance and Frequently Asked Questions on COVID-19, <https://www.ice.gov/coronavirus> (last visited Feb. 2022).

System (SEVIS) record, which the student's Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert "on-campus" or "off-campus," depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].

Must the F-1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her "full course of study"?

No. DHS will deem an F-1 nonimmigrant student who receives and complies with the employment authorization permitted under this notice to be engaged in a "full course of study"⁶⁷ for the duration of the student's employment authorization, provided that a qualifying undergraduate level F-1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F-1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term.⁶⁸ See 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F-1 nonimmigrant status.

Will an F-2 dependent (spouse or minor child) of an F-1 nonimmigrant student covered by this notice be eligible to apply for employment authorization?

No. An F-2 spouse or minor child of an F-1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F-2 nonimmigrant status. See 8 CFR 214.2(f)(15)(i).

⁶⁷ See 8 CFR 214.2(f)(6).

⁶⁸ Undergraduate F-1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a "full course of study." See 8 CFR 214.2(f)(6)(i)(B).

*Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F-1 visa and makes an initial entry in the United States after the effective date of this notice in the **Federal Register**?*

No. The suspension of the applicability of the standard regulatory requirements only applies to F-1 nonimmigrant students who meet the following conditions:

- (1) Are citizens of South Sudan, regardless of country of birth (or individuals having no nationality who last habitually resided in South Sudan);
- (2) Were lawfully present in the United States in F-1 nonimmigrant status under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), on the date of publication of this notice;
- (3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F-1 nonimmigrant students;
- (4) Are maintaining F-1 nonimmigrant status; and
- (5) Are experiencing severe economic hardship as a direct result of the humanitarian crisis in South Sudan.

An F-1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the humanitarian crisis in South Sudan).

*Does this notice apply to a continuing F-1 nonimmigrant student who departs the United States after the effective date of this notice in the **Federal Register** and who needs to obtain a new F-1 visa before returning to the United States to continue an educational program?*

Yes. This notice applies to such an F-1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I-20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F-1 visa in order to continue their educational program in the United States.

Does this notice apply to elementary school, middle school, and high school students in F-1 status?

Yes. However, this notice does not by itself reduce the required course load for F-1 nonimmigrant students from South Sudan enrolled in private kindergarten through grade 12, or public-school grades 9 through 12. Such students must maintain the minimum number of hours of class attendance per week prescribed

by the academic institution for normal progress toward graduation. See 8 CFR 214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F-1 nonimmigrant students regardless of educational level. Eligible F-1 nonimmigrant students from South Sudan enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session. Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

On-Campus Employment Authorization

Will an F-1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For an F-1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F-1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F-1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session, if the DSO has entered the following statement in the remarks field of the SEVIS student record, which will be reflected on the student's Form I-20:

Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].

To obtain on-campus employment authorization, the F-1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the humanitarian crisis in South Sudan. An F-1 nonimmigrant student authorized by the student's DSO to engage in on-campus employment by means of this notice does not need to file any applications with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time employment on-campus when school is not in session or during school vacations apply. See 8 CFR 214.2(f)(9)(i).

Will an F-1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain their F-1 nonimmigrant status?

Yes. DHS will deem an F-1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a "full course of study"⁶⁹ for the purpose of maintaining their F-1 nonimmigrant student status for the duration of the on-campus employment if the student satisfies the minimum course load requirement described in this notice. See 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F-1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F-1 nonimmigrant student to take a reduced course load if the reduction would not meet the school's minimum course load requirement for continued enrollment.⁷⁰

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For an F-1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

- (a) The requirement that a student must have been in F-1 nonimmigrant status for one full academic year in order to be eligible for off-campus employment;
- (b) The requirement that an F-1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;
- (c) The requirement that limits an F-1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while school is in session; and
- (d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

⁶⁹ See 8 CFR 214.2(f)(6).

⁷⁰ Minimum course load requirement for enrollment in a school must be established in a publicly available document (e.g., catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a “full course of study”⁷¹ for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student’s employment authorization if the student satisfies the minimum course load requirement described in this notice. See 8 CFR 214.2(f)(6)(i)(F). However, the authorization for reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school’s minimum course load requirement.⁷²

How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the humanitarian crisis in South Sudan. Filing instructions are located at: <http://www.uscis.gov/i-765>.

Fee considerations. Submission of a Form I–765 currently requires payment of a \$410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. See www.uscis.gov/feewaiver. The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). See 8 CFR 103.7(c).

Supporting documentation. An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to the DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of the humanitarian crisis in South Sudan.

If the DSO agrees that the F–1 nonimmigrant student should receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student’s SEVIS record, which will then appear on the student’s Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765, according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that a F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a “full course of study”⁷³ at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a South Sudan citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in South Sudan), and is experiencing severe economic hardship as a direct result of the humanitarian crisis in South Sudan, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of 8 CFR 214.2(f)(5)(v) and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level; and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the humanitarian crisis in South Sudan.

Processing. To facilitate prompt adjudication of the student’s application for off-campus employment

authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes all of the following documents:

(1) A completed Form I–765;

(2) The required fee or properly documented fee waiver request, as described in 8 CFR 103.7(c); and

(3) A signed and dated copy of the student’s Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase “SPECIAL STUDENT RELIEF.” Failure to include this notation may result in significant processing delays.

If USCIS approves the student’s Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

Temporary Protected Status Considerations

Can an F–1 nonimmigrant student apply for temporary protected status (TPS) and for benefits under this notice at the same time?

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or other relief that reduce the student’s course load per term and permits an increased number of work hours per week, such as Special Student Relief,⁷⁴ under this notice has two options.

Under the first option, the nonimmigrant student may file the TPS application according to the instructions in the USCIS notice designating South Sudan for TPS published elsewhere in this issue of the **Federal Register**. All TPS applicants must file a Form I–821, Application for Temporary Protected Status with the appropriate fee (or request a fee waiver). Although not required to do so, if an F–1 nonimmigrant student wants to obtain a new EAD based on their TPS application that is valid through November 3, 2023, and to be eligible for automatic EAD extensions that may be available to certain EADs with an A–12 or C–19 category code, they must file Form I–765 and pay the Form I–765 fee (or submit a Request for a Fee Waiver (Form I–912)). After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that the student’s

⁷¹ See 8 CFR 214.2(f)(6).

⁷² Minimum course load requirement for enrollment in a school must be established in a publicly available document (e.g., catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

⁷³ See 8 CFR 214.2(f)(6).

⁷⁴ See DHS Study in the States, Special Student Relief, <https://studyinthestates.dhs.gov/students/special-student-relief> (last visited Feb. 2022).

DSO make the required entry in SEVIS, issue an updated Form I-20, as described in this notice, and notate that the nonimmigrant student has been authorized to carry a reduced course load and is working pursuant to a TPS-related EAD. So long as the nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate the student's nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains the student's TPS, then the student maintains F-1 nonimmigrant status and TPS concurrently.

Under the second option, the nonimmigrant student may apply for an EAD under Special Student Relief by filing the Form I-765 with the location specified in the filing instructions. At the same time, the F-1 nonimmigrant student may file a separate TPS application but must submit the TPS application according to the instructions provided in the **Federal Register** Notice designating South Sudan for TPS. The F-1 nonimmigrant student already has applied for employment authorization under Special Student Relief, and may choose not to submit the Form I-765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS EAD in light of automatic extensions that may be available to certain EADs with an A-12 or C-19 category code. The nonimmigrant student should check the appropriate box when filling out Form I-821 to indicate whether a TPS-related EAD is being requested. Again, so long as the nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, included as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F-1 nonimmigrant student status while having TPS.

When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The F-1 nonimmigrant student must maintain normal course load requirements for a "full course of study"⁷⁵ unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum

requirements (e.g., clock hours for language students). Once approved for Special Student Relief employment authorization, the F-1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter credit hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter credit hours of instruction per academic term if at the graduate level). See 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9)(i) and (ii).

How does a student who has received a TPS-related employment authorization document then apply for authorization to take a reduced course load under this notice?

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F-1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the humanitarian crisis in South Sudan. The DSO will then verify and update the student's record in SEVIS to enable the F-1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F-1 nonimmigrant student to have employment authorization.

Can a noncitizen who has been granted TPS apply for reinstatement of F-1 nonimmigrant student status after the noncitizen's F-1 nonimmigrant student status has lapsed?

Yes. Current regulations permit certain students who fall out of F-1 nonimmigrant student status to apply for reinstatement. See 8 CFR 214.2(f)(16). This provision might apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief until November 3, 2023⁷⁶ to eligible F-

1 nonimmigrant students. DHS will continue to monitor the situation in South Sudan. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act (PRA)

An F-1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the humanitarian crisis in South Sudan must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653-0038.

This notice also allows an eligible F-1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F-1 nonimmigrant student status.

To apply for employment authorization, certain F-1 nonimmigrant students must complete and submit a currently approved Form I-765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I-765, consistent with the PRA (OMB Control No. 1615-0040). Although there will be a slight increase in the number of Form I-765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I-765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Alejandro Mayorkas,
Secretary, U.S. Department of Homeland Security.

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requirement in this notice. DHS also considers students who engage in online coursework pursuant to ICE coronavirus disease 2019 (COVID-19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. See ICE Guidance and Frequently Asked Questions on COVID-19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, <https://www.ice.gov/coronavirus> (last visited Feb. 2022).

⁷⁵ See 8 CFR 214.2(f)(6).

⁷⁶ Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F-1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a "full course of study," see 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of November 3, 2023, provided the student satisfies the minimum course load

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2712–22; DHS Docket No. USCIS–2014–004]

RIN 1615–ZB79

Extension and Redesignation of South Sudan for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of South Sudan for Temporary Protected Status (TPS) for 18 months, from May 3, 2022, through November 3, 2023, and redesignating South Sudan for 18 months, effective May 3, 2022, through November 3, 2023. The extension allows currently eligible TPS beneficiaries to retain TPS through November 3, 2023, so long as they otherwise continue to meet the eligibility requirements for TPS. The redesignation of South Sudan allows additional individuals who have been continuously residing in the United States since March 1, 2022, to obtain TPS, if otherwise eligible.

DATES: *Extension of Designation of South Sudan for TPS:* The 18-month extension of the TPS designation of South Sudan is effective May 3, 2022, and will remain in effect through November 3, 2023. The 60-day re-registration period for existing beneficiaries runs from March 3, 2022, through May 2, 2022. (**Note:** It is important for re-registrants to timely re-register during this 60-day period and not to wait until their Employment Authorization Documents (EADs) expire, which could result in their having gaps in their employment authorization documentation.)

Redesignation of South Sudan for TPS: The 18-month redesignation of South Sudan for TPS is effective May 3, 2022, and will remain in effect through November 3, 2023. The initial registration period for new applicants under the South Sudan TPS redesignation begins on March 3, 2022, and will remain in effect through November 3, 2023.

FOR FURTHER INFORMATION CONTACT:

• You may contact Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy,

U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.

• For further information on TPS, including guidance on the registration and re-registration process and additional information on eligibility, please visit the USCIS TPS web page at <https://www.uscis.gov/tps>. You can find specific information about this extension of South Sudan’s TPS designation by selecting “South Sudan” from the menu on the left side of the TPS web page.

• If you have additional questions about TPS, please visit uscis.gov/tools. Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

• Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at <https://www.uscis.gov>, or visit the USCIS Contact Center at uscis.gov/contactcenter.

• Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
 CFR—Code of Federal Regulations
 DHS—U.S. Department of Homeland Security
 DOS—U.S. Department of State
 EAD—Employment Authorization Document
 FNC—Final Nonconfirmation
 Form I–765—Application for Employment Authorization
 Form I–797—Notice of Action
 Form I–821—Application for Temporary Protected Status
 Form I–9—Employment Eligibility Verification
 Form I–912—Request for Fee Waiver
 Form I–94—Arrival/Departure Record
 FR—Federal Register
 Government—U.S. Government
 IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
 IJ—Immigration Judge
 INA—Immigration and Nationality Act
 SAVE—USCIS Systematic Alien Verification for Entitlements Program
 Secretary—Secretary of Homeland Security
 TNC—Tentative Nonconfirmation
 TPS—Temporary Protected Status
 TTY—Text Telephone
 USCIS—U.S. Citizenship and Immigration Services
 U.S.C.—United States Code

Through this notice, DHS sets forth procedures necessary for eligible

nationals of South Sudan (or individuals having no nationality who last habitually resided in South Sudan) to (1) re-register for TPS and to apply for renewal of their EADs with USCIS or (2) submit an initial registration application under the redesignation and apply for an EAD.

Re-registration is limited to individuals who have previously registered for TPS under a prior designation of South Sudan and whose applications have been granted. Failure to re-register properly may result in the withdrawal of your TPS following appropriate procedures. See 8 CFR 244.14.

For individuals who have already been granted TPS under South Sudan’s designation, the 60-day re-registration period runs from March 3, 2022, through May 2, 2022. USCIS will issue new EADs with a November 3, 2023, expiration date to eligible South Sudanese TPS beneficiaries who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive new EADs before their current EADs expire on May 2, 2022. Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of EADs previously issued under the TPS designation of South Sudan for 180 days, through November 1, 2022. Therefore, TPS beneficiaries can show their EADs with: (1) A May 2, 2022, expiration date on the face of the card and (2) an A–12 or C–19 category code as proof of continued employment authorization through November 1, 2022. This notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have a South Sudan TPS application (Form I–821) and/or Application for Employment Authorization (Form I–765) that was still pending as of March 3, 2022, do not need to file either application again. If USCIS approves an individual’s Form I–821, USCIS will grant the individual TPS through November 3, 2023. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date. There are currently approximately 97 beneficiaries under South Sudan’s TPS designation.

Under the redesignation, individuals who currently do not have TPS may

submit an initial application during the initial registration period that runs from March 3, 2022, and runs through the full length of the redesignation period ending November 3, 2023.¹ In addition to demonstrating continuous residence in the United States since March 1, 2022 and meeting other eligibility criteria, initial applicants for TPS under this redesignation must demonstrate that they have been continuously physically present in the United States since March 3, 2022, the effective date of this redesignation of South Sudan, before USCIS may grant them TPS. The DHS Office of Immigration Statistics has estimated that approximately 235 individuals may become newly eligible for TPS under the redesignation of South Sudan.

What is temporary protected status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated country.

¹ In general, individuals must be given an initial registration period of no less than 180 days to register for TPS, but the Secretary has discretion to provide for a longer registration period. *See* 8 U.S.C. 1254a(c)(1)(A)(iv). Historically, the length of the initial registration period has varied. *Compare* 66 FR 14214 (March 9, 2001) (18 months initial registration period for applicants under TPS designation for El Salvador) *with* 80 FR 36346 (June 24, 2015) (180-day initial registration period for applicants under TPS designation for Nepal). In recent years, this period has generally been limited to the statutory minimum of 180 days, although later extensions of the initial registration period have also been announced for some countries. *See, e.g.,* 81 FR 4051 (Jan. 25, 2016) (setting 180-day initial registration period during extension and redesignation of South Sudan for TPS); 78 FR 1866 (Jan. 9, 2013) (setting 180-day initial registration period during extension and redesignation of Sudan for TPS); 75 FR 39957 (July 13, 2010) (extension of previously announced initial 180-day registration period for Haiti TPS applicants to allow more time for individuals to apply). After evaluating whether to limit the initial registration period for TPS under this new designation of South Sudan to the statutory minimum of 180 days, DHS has determined that it will provide the full 18 months of this designation for applicants to file their initial registration Form I-821 and, if desired, Form I-765 to obtain employment authorization documentation. Limiting the initial registration period to 180 days may place a burden on applicants who may be otherwise eligible for TPS. In addition, permitting registration throughout the entirety of the designation period could reduce the operational burden on USCIS, as incoming applications may be spread out over a longer period of time. This extended registration period is both in keeping with the humanitarian purpose of TPS and will better advance the goal of ensuring “the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them.” *See Executive Order 14012, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*, 86 FR 8277 (Feb. 5, 2021).

- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.

- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. Upon return from such authorized travel, TPS beneficiaries retain the same immigration status they had prior to the travel.

- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).

- When the Secretary terminates a country’s TPS designation, beneficiaries return to one of the following:

- The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or been terminated); or

- Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

When was South Sudan designated for TPS?

South Sudan was initially designated on October 13, 2011, on the dual bases of ongoing armed conflict and extraordinary and temporary conditions in South Sudan that prevented nationals of South Sudan from safely returning. *See Designation of Republic of South Sudan for Temporary Protected Status*, 76 FR 63629 (Oct. 13, 2011). Following the initial designation, the Secretary extended and redesignated South Sudan for TPS in 2013, 2014, and 2016. *See Extension and Redesignation of South Sudan for Temporary Protected Status*, 78 FR 1866 (Jan. 9, 2013); *Extension and Redesignation of South Sudan for Temporary Protected Status*, 79 FR 52019 (Sept. 2, 2014); *Extension and Redesignation of South Sudan for Temporary Protected Status*, 81 FR 4051 (Jan. 25, 2016). In 2017 and 2019, DHS extended TPS for South Sudan, based on ongoing armed conflict and extraordinary and temporary conditions. *See Extension of South Sudan for Temporary Protected Status*, 82 FR 44205 (Sept. 21, 2017); *Extension of the Designation of South Sudan for Temporary Protected Status*, 84 FR 13688 (Apr. 5, 2019). Most recently, in 2020, DHS extended South Sudan’s TPS designation for 18 months, based on ongoing armed conflict and extraordinary and temporary conditions. *See Extension of the Designation of*

South Sudan for Temporary Protected Status, 85 FR 69344 (Nov. 2, 2020).

What authority does the Secretary have to extend the designation of South Sudan for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.² The decision to designate any foreign state (or part thereof) is a discretionary decision, and the TPS statute states that there is no judicial review of any determination with respect to the designation, extension, or termination of a designation.³ The Secretary, in their discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country’s TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in the foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary does not determine that the foreign state no longer meets the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary’s discretion, 12 or 18 months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

² As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS “shall be deemed to refer to the Secretary” of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

³ *See* INA, section 244(b)(5)(A). This issue of judicial review is the subject of litigation. *See, e.g., Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020), petition for en banc rehearing filed Nov. 30, 2020 (No. 18–16981); *Saget v. Trump*, 375 F. Supp. 3d 280 (E.D.N.Y. 2019).

What is the Secretary's authority to redesignate South Sudan for TPS?

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. See section 244(b)(1) of the Act, 8 U.S.C. 1254a(b)(1); see also section 244(c)(1)(A)(i) of the Act, 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that “the alien has been continuously physically present since the effective date of the most recent designation of the state”) (emphasis added).⁴

When the Secretary designates or redesignates a country for TPS, the Secretary also has the discretion to establish the date from which TPS applicants must demonstrate that they have been “continuously resid[ing]” in the United States. See section 244(c)(1)(A)(ii) of the Act, 8 U.S.C. 1254a(c)(1)(A)(ii). The Secretary has determined that the “continuous residence” date for applicants for TPS under the redesignation of South Sudan shall be March 1, 2022. Initial applicants for TPS under this redesignation must also show they have been “continuously physically present” in the United States since March 3, 2022, which is the effective date of the Secretary's redesignation, of South Sudan. See section 244(c)(1)(A)(i) of the Act, 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, the final determination of whether the applicant has met the “continuous physical presence” requirement cannot be made until March 3, 2022. USCIS, however, will issue employment authorization documentation, as appropriate, during the registration period in accordance with 8 CFR 244.5(b).

Why is the Secretary extending the TPS designation for South Sudan and simultaneously redesignating South Sudan for TPS through November 3, 2023?

DHS has reviewed country conditions in South Sudan. Based on the review, including consultation with the Department of State (DOS), the Secretary has determined that an 18-month extension is warranted because the ongoing armed conflict and

⁴ The extension and redesignation of TPS for South Sudan is one of several instances in which the Secretary and, prior to the establishment of DHS, the Attorney General, have simultaneously extended a country's TPS designation and redesignated the country for TPS. See, e.g., 76 FR 29000 (May 19, 2011) (extension and redesignation for Haiti); 69 FR 60168 (Oct. 7, 2004) (extension and redesignation for Sudan); 62 FR 16608 (Apr. 7, 1997) (extension and redesignation for Liberia).

extraordinary and temporary conditions supporting South Sudan's TPS designation persist. The Secretary has further determined that the conditions support redesignating South Sudan for TPS under section 244(b)(1)(A) and (C) of the Act and is changing the “continuous residence” and “continuous physical presence” dates that applicants must meet to be eligible for TPS. Armed conflict and extraordinary and temporary conditions in South Sudan persist. Armed conflict poses a serious threat to the safety of returning nationals in South Sudan. Despite a 2018 ceasefire of South Sudan's civil war, ongoing fighting between the major armed groups continue to result in violence against civilians, including civilian casualties and gender-based violence, in several large areas of the country. Extraordinary and temporary conditions that further prevent South Sudanese nationals from returning in safety include an exceptional level of intercommunal violence, a humanitarian crisis involving severe food insecurity, record-setting flooding, and large-scale displacement of civilians.

Since February 2020, limited implementation of the September 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS)⁵ “has hindered improvements in the protection of civilians and prospects for long-term peace” in South Sudan.⁶ Moreover, ongoing political disputes and disagreements between the two main signatories—the Sudan People's Liberation Movement (SPLM), led by President Salva Kiir Mayardit, and the Sudan People's Liberation Movement-Army in Opposition (SPLM/A-IO), led by the First Vice-President, Riek Machar Teny, “has widened existing political, military and ethnic divisions in the

⁵ The Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) was signed on September 12, 2018 by President Kiir, current First Vice President Riek Machar Teny, and other representatives of certain opposition groups. A prior peace agreement was signed in 2015 and a unity government was formed; however, fighting ensued between the parties in July 2016 and Machar left South Sudan shortly thereafter. The R-ARCSS addresses various political, security, and transitional justice issues, including the establishment of a unity government. However, not all of South Sudan's opposition leaders signed the agreement, including a key opposition group, the National Salvation Front (NAS). South Sudan Security Situation, EASO, April 24, 2020, pg. 3, available at: https://www.ecoi.net/en/file/local/2028851/2020_04_Q8_COI_South_Sudan_Security_Situation.pdf.

⁶ Panel of Experts on South Sudan, United Nations (UN) Security Council, April 15, 2021, pg. 2, available at: <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

country and has led to multiple incidents of violence” between the two parties.⁷ Political divisions among the non-signatories⁸ to the R-ARCSS have also not been resolved.⁹ Moreover, the SPLM/A-IO has begun to break apart and new splinter groups have formed,¹⁰ resulting in increased violence.¹¹

Thus, South Sudan faces increasing violence¹² from both government security forces and armed groups.¹³ In 2020, the United Nations (UN) and international organizations reported on “widespread killings, mutilations, and sexual violence, disproportionately committed by government forces but also by the National Salvation Front¹⁴ (NAS), a key opposition group.”¹⁵ In March 2021, the UN Commission on Human Rights in South Sudan noted that armed clashes at the local level also resulted in the mass displacement of the civilian population, particularly women and girls.¹⁶ Children are among those

⁷ Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 2, available at: <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

⁸ Previously united under one umbrella group—the South Sudan Opposition Movements Alliance—non-signatories of the R-ARCSS have divided into two factions, one led by General Thomas Cirillo Swaka, the leader of the National Salvation Front (“NAS”), and another led by General Pagan Amum and General Paul Malong Awan Anei. Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 9, available at: <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

⁹ Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 9, available at: <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

¹⁰ See id.

¹¹ SURFACE TENSION: ‘COMMUNAL’ VIOLENCE AND ELITE AMBITIONS IN SOUTH SUDAN, ACLED, August 19, 2021, available at: <https://acleddata.com/2021/08/19/surface-tension-communal-violence-and-elite-ambitions-in-south-sudan/>.

¹² See id.

¹³ Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 15, available at: <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

¹⁴ The opposition group NAS is led by General Thomas Cirillo Swaka, and has maintained a significant security presence and support in Central Equatoria. NAS is not a signatory to the R-ARCSS, maintaining that the root causes of the conflict in South Sudan have not been addressed in the peace agreement. See *Final report of the Panel of Experts on South Sudan*, UN Security Council, April 28, 2020, pg. 16, available at: <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

¹⁵ 2020 Country Reports on Human Rights Practices: South Sudan, U.S. Department of State, March 31, 2021, section 1, available at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/south-sudan/>.

¹⁶ Report of the Commission on Human Rights in South Sudan, UN Human Rights Council, February

feeling the greatest impact of this violence, which—along with other factors—is exposing them to protection risks and life-threatening diseases.¹⁷ Moreover, sexual violence—including rape, gang rape, abduction, sexual slavery, and sexual mutilation remain “consistent features of the conflict in South Sudan since 2013, and are now being replicated in conflict at the local level.”¹⁸

Humanitarian organizations in South Sudan continue to face security and bureaucratic barriers that affect the delivery of and access to humanitarian aid and pose “serious personal risks to aid workers.”¹⁹

Moreover, in 2021, “widespread flooding, ongoing violence, and subsequent displacement continued to deepen humanitarian needs in South Sudan.”²⁰ As a result, South Sudan is also facing “one of the direst food crises the country has faced since its independence in 2011.”²¹ Chronic food shortages, a deepening economic crisis, insecurity, and limited agricultural production have led to high levels of acute malnutrition.²² South Sudan’s health care infrastructure also remains inadequate.²³ Facilities are limited, often inaccessible, and facing staffing shortages amongst ongoing insecurity and violence.²⁴

4, 2021, pg. 14, available at: https://www.ecoi.net/en/file/local/2046934/A_HRC_46_53_E.pdf.

¹⁷ South Sudan Humanitarian Situation Report, UN Children’s Fund (UNICEF), December 30, 2021, pg. 2, available at: <https://reliefweb.int/report/south-sudan/unicf-south-sudan-humanitarian-situation-report-no-163-1-30-november-2021>.

¹⁸ Report of the Commission on Human Rights in South Sudan, UN Human Rights Council, February 4, 2021, pg. 14; available at: https://www.ecoi.net/en/file/local/2046934/A_HRC_46_53_E.pdf.

¹⁹ Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 16, available at: <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

²⁰ Situation in South Sudan; Report of the Secretary-General, UN Security Council, December 7, 2021 pg. 5, available at: https://www.ecoi.net/en/file/local/2065323/S_2021_1015_E.pdf.

²¹ Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 15, available at: <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

²² South Sudan Humanitarian Fund Annual Report 2020, UN Office for the Coordination of Humanitarian Affairs (UNOCHA), July 6, 2021, pg. 7, available at: <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-fund-annual-report-2020>.

²³ South Sudan—Strengthening primary health care in fragile settings, World Health Organization, May 20, 2021, available at: <https://www.who.int/news-room/feature-stories/detail/south-sudan-2021>.

²⁴ South Sudan—Strengthening primary health care in fragile settings, World Health Organization, May 20, 2021, available at: <https://www.who.int/news-room/feature-stories/detail/south-sudan-2021>.

Numbers at a Glance

The United States Agency for International Development (USAID) provided the following key statistics for South Sudan in a January 19, 2022 Fact Sheet:²⁵

- *Number of people in need of Humanitarian Assistance:* 8,300,000²⁶ (per UN Office for the Coordination of Humanitarian Affairs (UNOCHA) as of March 2021)
- *Number of estimated internally displaced persons (IDPs):* 2,000,000 (per UNOCHA as of January 2022)
- *Number of people affected by ongoing floods since May 2021:* 835,000 (per UNOCHA as of January 2022)
- *Estimated number of refugees from South Sudan in neighboring countries:* 2,300,000 (per Office of the UN High Commissioner for Refugees (UNHCR) as of November 2021)

Security Situation

In June 2021, the UN reported that “the overall implementation of the R–ARCSS is progressing slowly.”²⁷ Political gridlock over implementation of the political and security aspects of the R–ARCSS have also contributed to insecurity in South Sudan.²⁸ The UN further assessed that weak or absent State governance has allowed “perennial communal and ethnic cleavages,” while entrenched insecurity contributes to a vicious cycle of livestock raiding and subsequent food insecurity. A weakened rule of law and flagging economic conditions have resulted in increased criminality and the targeting of humanitarian workers.²⁹

The lack of adequate financial resources and logistical support for the

²⁵ South Sudan—Crisis, Fact Sheet #2 Fiscal Year 2022, U.S. Agency for International Development (USAID), January 19, 2022, available at: <https://reliefweb.int/report/south-sudan/south-sudan-complex-emergency-fact-sheet-2-fiscal-year-fy-2022>.

²⁶ According to UNOCHA, as of January 2021 the total population of South Sudan is 12.1 million. South Sudan—Crisis, Fact Sheet #2 Fiscal Year 2022, USAID, January 19, 2022, available at: <https://reliefweb.int/report/south-sudan/south-sudan-complex-emergency-fact-sheet-2-fiscal-year-fy-2022>.

²⁷ Marking a Decade of Independence, South Sudan Faces Slow Progress, Lingering Violence, Secretary-General’s Special Representative Tells Security Council, UN Security Council, June 22, 2021, available at: <https://reliefweb.int/report/south-sudan/marking-decade-independence-south-sudan-faces-slow-progress-lingering-violence>.

²⁸ Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 2, available at: <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

²⁹ Marking a Decade of Independence, South Sudan Faces Slow Progress, Lingering Violence, Secretary-General’s Special Representative Tells Security Council, UN Security Council, June 22, 2021, available at: <https://reliefweb.int/report/south-sudan/marking-decade-independence-south-sudan-faces-slow-progress-lingering-violence>.

unification, training, and deployment of the South Sudan armed forces, as outlined in the R–ARCSS, remains a significant security challenge.³⁰ A key component of the R–ARCSS is the long-term garrisoning (cantonment), registration, screening, selection, training and redeployment of opposition forces and the creation of a unified army of 83,000 soldiers. South Sudanese military cantonment sites and training centers³¹ have made little progress in establishing a unified force, further contributing to a security vacuum in the country.³² Security forces in the few cantonment sites often lack access to basic services, such as food, water, sanitation and health care.³³ In addition, the proliferation and availability of small amounts of ammunition across South Sudan³⁴ has “enabled armed groups not associated with government security forces, such as local militias and cattle-raiding groups, to perpetuate instability” in the country.³⁵

The U.S. Department of State noted in its 2020 Country Reports on Human Rights Practices for South Sudan that:

The United Nations, international cease-fire monitors, human rights organizations, and media reported the government, or its agents, committed numerous arbitrary or unlawful killings. Security forces, opposition forces, armed militias affiliated with the government and the opposition, and ethnically based groups were also responsible for widespread extrajudicial killings.³⁶

Moreover, in 2020, ongoing violence in Jonglei and the Greater Pibor Administration Area was “the worst

³⁰ Report of the Commission on Human Rights in South Sudan, UN Human Rights Council, March 4, 2021, pg. 4, available at: https://www.ecoi.net/en/file/local/2046934/A_HRC_46_53_E.pdf.

³¹ Report of the Commission on Human Rights in South Sudan, United Nations General Assembly, January 31, 2020, pg. 6, available at: https://www.ecoi.net/en/file/local/2025863/A_HRC_43_56_E.pdf.

³² Report of the Commission on Human Rights in South Sudan, UN Human Rights Council, March 4, 2021, pg. 13, available at: https://www.ecoi.net/en/file/local/2046934/A_HRC_46_53_E.pdf.

³³ Report of the Commission on Human Rights in South Sudan [A/HRC/46/53] UN Human Rights Council, March 4, 2021, pg. 4, available at: https://www.ecoi.net/en/file/local/2046934/A_HRC_46_53_E.pdf.

³⁴ Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 21, available at: <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

³⁵ Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 21, available at: <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

³⁶ 2020 Country Reports on Human Rights Practices: South Sudan, U.S. Department of State, March 31, 2021, section 1, available at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/south-sudan/>.

recorded since the outbreak of the national conflict in South Sudan in December 2013, with waves of attacks and reprisals that left hundreds of South Sudanese women, men and children dead, maimed or destitute.”³⁷ In March 2021, the UN Commission on Human Rights in South Sudan assessed that “gross human rights violations and abuses amounting to serious violations of international humanitarian law were committed in the context of localized conflicts by armed militias affiliated to the primary parties in conflict—the South Sudan People’s Defence Forces (SSPDF) and the Sudan People’s Liberation Movement—In Opposition (SPLA–IO).”³⁸ These acts included those”:

perpetrated against civilians, includ[ing] abductions, forced recruitment (including of children), murder, sexual violence, ill-treatment, looting and the unnecessary destruction of property. Many of these attacks revealed a shocking disregard for civilian lives.³⁹

In 2021, Upper Nile, Warrap, Lakes, Central Equatoria, and Western Equatoria states were particularly affected by violence “resulting in displacement, increased protection risks and rights violations, as well as diminished humanitarian access.”⁴⁰

Violence Against Children

Children in South Sudan continued to be victims of what the Office of the Special Representative of the Secretary General for Children and Armed Conflict refers to as “grave violations” against children.⁴¹ According to the UN Security Council’s 2021 Children and Armed Conflict in South Sudan report, children were recruited by the SPLM/A–IO and the SSPDF.⁴² In addition,

³⁷ Report of the Commission on Human Rights in South Sudan UN Human Rights Council, March 4, 2021, pg. 7, available at: https://www.ecoi.net/en/file/local/2046934/A_HRC_46_53_E.pdf.

³⁸ Report of the Commission on Human Rights in South Sudan, UN Human Rights Council, March 4, 2021, pg. 9, available at: https://www.ecoi.net/en/file/local/2046934/A_HRC_46_53_E.pdf.

³⁹ Id.

⁴⁰ Situation in South Sudan, UN Security Council, September 9, 2021, pg. 4, available at: https://www.ecoi.net/en/file/local/2060682/S_2021_784_E.pdf.

⁴¹ To better monitor, prevent, and end these attacks, the United Nations Security Council has identified and condemned six grave violations against children in times of war: Killing and maiming of children; recruitment or use of children in armed forces and armed groups; attacks on schools or hospitals; rape or other grave sexual violence; abduction of children; and denial of humanitarian access for children. The Six Grave Violations, Office of the Special Representative of the Secretary General for Children and Armed Conflict, <https://childrenandarmedconflict.un.org/six-grave-violations/> (last visited on January 13, 2022).

⁴² Id.

hundreds of girls and boys continue to be abducted.⁴³ Perpetrators of child abduction included the NAS, SPLM/A–IO, and SSPDF.⁴⁴ Child abuse, including sexual abuse, was reportedly also widespread in South Sudan.⁴⁵

Sexual and Gender-Based Violence

Sexual and gender-based violence remains a “hallmark of the conflict in South Sudan.”⁴⁶ In February 2021, the UN Commission on Human Rights in South Sudan reported that:

As of September 2020, South Sudan had seen an estimated 88 percent increase in the number of women victims of conflict-related sexual violence since the previous quarter and a 119 percent rise in the number of abductions since the previous quarter. The upsurge in localized conflict in Central Equatoria (Yei and surrounding areas), Jonglei and the Greater Pibor Administrative Area and Warrap (Tonj West and North) saw women and girls targeted by all sides.⁴⁷

In addition, rural communities often abducted women and children during cattle raids.⁴⁸ Girls who are abducted have been reportedly “forced into sexual slavery, tortured and repeatedly gang raped.”⁴⁹ According to credible reports, perpetrators of forced marriage and sexual violence include security forces, community-based militias, civil defense groups, and other armed groups.⁵⁰

Humanitarian Situation

In 2020, continued violence, particularly in Jonglei, Warrap, and the Greater Equatoria region resulted in “sustained mass population

⁴³ Report of the Commission on Human Rights in South Sudan, United Nations General Assembly, February 4, 2021, pg. 7, available at: <https://reliefweb.int/report/south-sudan/report-commission-human-rights-south-sudan-ahrc4653>.

⁴⁴ Children and armed conflict in South Sudan, United Nations Security Council, May 6, 2021, pg. 21, available at: https://www.un.org/ga/search/view_doc.asp?symbol=S/2021/437&Lang=E&Area=UNDOC.

⁴⁵ 2020 Country Reports on Human Rights Practices: South Sudan, U.S. Department of State, March 31, 2021, section 5, available at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/south-sudan/>.

⁴⁶ Report of the Commission on Human Rights in South Sudan, UN Human Rights Council, February 4, 2021, pg. 13, https://www.ecoi.net/en/file/local/2046934/A_HRC_46_53_E.pdf.

⁴⁷ Id.

⁴⁸ 2020 Country Reports on Human Rights Practices: South Sudan, U.S. Department of State, March 31, 2021, section 5, available at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/south-sudan/>.

⁴⁹ Report of the Commission on Human Rights in South Sudan, United Nations General Assembly, February 4, 2021, pg. 7, <https://reliefweb.int/report/south-sudan/report-commission-human-rights-south-sudan-ahrc4653>.

⁵⁰ UNHCR Position on Returns to South Sudan, UNHCR, October 2021, pg. 7, <https://www.refworld.org/pdfid/617676f04.pdf>.

displacement, both within the country and into neighboring countries, and high levels of humanitarian and protection needs.”⁵¹ Insecurity and COVID-related restrictions also further hampered humanitarian organizations’ ability to deploy and respond to medical and other emergency needs in the area.⁵²

In January 2021, UNOCHA assessed that “more people in South Sudan than ever are in need of humanitarian assistance,” resulting in an “estimated 8.5 million people, over two thirds of the population, in need of humanitarian assistance, compared to 7.5 million in 2020 and 7.1 million in 2019.”⁵³ South Sudan is also facing high levels of food insecurity and violence, coupled with flooding and the impact of the COVID–19 pandemic.⁵⁴

Displacement

Civilians faced significant conflict-related forced displacement in South Sudan.⁵⁵ In August 2020, UNOCHA estimated that since February 2020, 157,000 people had been displaced in several counties in Jonglei state, as a result of the ongoing violence and revenge attacks among the warring parties.⁵⁶ In 2021, fighting between armed forces, ongoing violence, and cattle raids in Central and Western Equatoria, Jonglei, the Greater Pibor Administrative Area and Upper Nile states “uprooted people and disrupted humanitarian activities.”⁵⁷ In Western Equatoria, an estimated 80,000 people

⁵¹ 2020 Country Reports on Human Rights Practices: South Sudan, U.S. Department of State, March 31, 2021, section 5, available at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/south-sudan/>.

⁵² South Sudan—Violence, floods, displacement in Jonglei, European Civil Protection and Humanitarian Aid Operations, August 11, 2020, available at: <https://reliefweb.int/report/south-sudan/south-sudan-violence-floods-displacement-jonglei-dg-echo-ocha-media-echo-daily>.

⁵³ Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 16, <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

⁵⁴ Situation in South Sudan, UN Security Council, September 9, 2021, pg. 6, https://www.ecoi.net/en/file/local/2060682/S_2021_784_E.pdf.

⁵⁵ Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 25, <https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

⁵⁶ South Sudan—Violence, floods, displacement in Jonglei, European Civil Protection and Humanitarian Aid Operations, August 11, 2020, <https://reliefweb.int/report/south-sudan/south-sudan-violence-floods-displacement-jonglei-dg-echo-ocha-media-echo-daily>.

⁵⁷ Situation in South Sudan, UN Security Council, September 9, 2021, pg. 6–7, https://www.ecoi.net/en/file/local/2060682/S_2021_784_E.pdf.

were displaced in Tambura country.⁵⁸ In early July 2021, fighting in Warrap state displaced around 10,000 people and left hundreds without any shelter.⁵⁹ In Upper Nile, in August 2021, fighting among factions of SPLM/A–IO displaced some 2,000 people.⁶⁰

Food Insecurity⁶¹ and Floods

South Sudan remains one of the most food-insecure countries in the world.⁶² The overall food security situation deteriorated towards the end of 2020.⁶³ Between April and July 2021, an estimated 7.2 million people, 60 percent of the population, faced high levels of acute food insecurity.⁶⁴ Malnutrition in particular remains a pressing issue in South Sudan, with approximately 1.9 million women and children acutely malnourished.⁶⁵ Malnutrition levels among children under five years of age are above emergency thresholds in many parts of the country, and 1.4 million children are estimated to be acutely malnourished.⁶⁶ The main factors driving food insecurity and malnourishment are the ongoing conflicts, flooding, and COVID–19.⁶⁷

⁵⁸ Situation in South Sudan; Report of the Secretary-General, UN Security Council, December 7, 2021, pg. 5, https://www.ecoi.net/en/file/local/2065323/S_2021_1015_E.pdf.

⁵⁹ Situation in South Sudan, UN Security Council, September 9, 2021, pg. 6, https://www.ecoi.net/en/file/local/2060682/S_2021_784_E.pdf.

⁶⁰ Id. at pg. 7.

⁶¹ According to the Food and Agriculture Organization of the United Nations (FAO), the lack of “regular access to enough safe and nutritious food for normal growth and development and an active and healthy life. This may be due to unavailability of food and/or lack of resources to obtain food. Food insecurity can be experienced at different levels of severity.” Hunger and food security, Food and Agriculture Organization of the United Nations (FAO), <https://www.fao.org/hunger/glossary> (last visited January 13, 2022).

⁶² South Sudan Humanitarian Fund Annual Report 2020, UNOCHA, July 6, 2021, pg. 7, available at <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-fund-annual-report-2020>.

⁶³ South Sudan Humanitarian Fund Annual Report 2020, UNOCHA, July 6, 2021, pg. 7, available at <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-fund-annual-report-2020>.

⁶⁴ Situation in South Sudan, UN Security Council, September 9, 2021, pg. 6, available at https://www.ecoi.net/en/file/local/2060682/S_2021_784_E.pdf.

⁶⁵ South Sudan Situation Report, World Food Programme, October 29, 2021, pg.1, available at <https://reliefweb.int/report/south-sudan/wfp-south-sudan-situation-report-296-29-october-2021>.

⁶⁶ Situation in South Sudan, UN Security Council, September 9, 2021, pg. 6, available at https://www.ecoi.net/en/file/local/2060682/S_2021_784_E.pdf.

⁶⁷ South Sudan Humanitarian Fund Annual Report 2020, UNOCHA, July 6, 2021, pg. 7, available at <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-fund-annual-report-2020>.

Moreover, COVID–19 mitigation efforts also disrupted access to supply chains for commercial and humanitarian assistance, further contributing to food insecurity.⁶⁸

In October 2021, the World Food Programme (WFP) reported that South Sudan faced a third year of unprecedented flooding.⁶⁹ The flooding was exacerbated by standing water from major floods in the previous two years, most of which had not fully receded.⁷⁰ The most recent flooding has led to “widespread displacement, destruction of livelihoods and contamination of water sources, compounding existing insecurity issues in many regions.”⁷¹ In its December 2021 report, UNOCHA reported that the number of people affected by floods since May 2021 was 835,000,⁷² up from the 380,000 reported in August 2021.⁷³ In its February 2021 report, the UN Commission on Human Rights in South Sudan reported that “since the onset of the floods in July 2020, more than one million South Sudanese have been affected by the flooding and more than 856,000 people were displaced and forced to seek refuge on higher ground.”⁷⁴ The Commission further noted that:

The floods also destroyed hectares of crops and led to the loss of livestock indispensable to the survival of local populations. Moreover, vital water sources became heavily contaminated, rendering vulnerable communities unable to flee at severe risk of contracting life-threatening waterborne diseases, including typhoid and cholera.⁷⁵

Access to Humanitarian Assistance

Insecurity continued to affect access to humanitarian assistance, particularly in parts of Central and Western

⁶⁸ Id.

⁶⁹ South Sudan Situation Report, World Food Programme, October 29, 2021, pg.1, available at <https://reliefweb.int/report/south-sudan/wfp-south-sudan-situation-report-296-29-october-2021>.

⁷⁰ South Sudan Situation Report, REACH, December 2021, pg. 2, available at <https://reliefweb.int/report/south-sudan/south-sudan-flooding-trends-counties-particular-concern-food-insecurity-december>.

⁷¹ Id. at pg. 1.

⁷² South Sudan Situation Report, UNOCHA, December 2021, pg. 1, available at <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-snapshot-december-2021>.

⁷³ South Sudan Humanitarian Snapshot, UNOCHA, August 2021, pg. 1, available at <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-snapshot-august-2021>.

⁷⁴ Report of the Commission on Human Rights in South Sudan, United Nations General Assembly, February 4, 2021, pg. 10, available at <https://reliefweb.int/report/south-sudan/report-commission-human-rights-south-sudan-ahrc4653>.

⁷⁵ Report of the Commission on Human Rights in South Sudan, United Nations General Assembly, February 4, 2021, pg. 11, available at <https://reliefweb.int/report/south-sudan/report-commission-human-rights-south-sudan-ahrc4653.1>.

Equatoria, Jonglei, and the Greater Pibor Administrative Area.⁷⁶ In addition, in 2021 humanitarian workers and facilities continued to be targeted and at risk of attack,⁷⁷ resulting in the disruption and suspension of humanitarian action.⁷⁸ In December 2021, the UN assessed that between September and November 2021, “89 humanitarian access incidents were reported, including 13 ambushes and 5 lootings, a 47 percent increase compared with the previous reporting period [published in June 2021].”⁷⁹ In Western Equatoria, health facilities were looted and destroyed; since the beginning of 2021, more than 911 metric tons of food items and nutritional supplements have been looted or destroyed.⁸⁰ Moreover, recurring violence in Jonglei and Greater Pibor Administrative Area affected the delivery of critical humanitarian assistance to highly food-insecure people.⁸¹ In addition, poor road conditions, compounded by heavy rain and ongoing floods, have led to access challenges and slowed the response in the flood-affected areas.⁸² The government of South Sudan also has limited access to humanitarian aid by establishing:

an intentionally complex bureaucratic system for the delivery of aid and has failed to guarantee the safe delivery of humanitarian aid. In particular, multiple sources raised serious concerns about the Government’s deliberate policy of denying or delaying the issuance of visas for hundreds of international humanitarian staff who had been evacuated from South Sudan owing to COVID–19.⁸³

⁷⁶ Situation in South Sudan, UN Security Council, September 9, 2021, pg. 7, available at https://www.ecoi.net/en/file/local/2060682/S_2021_784_E.pdf.

⁷⁷ Situation in South Sudan, UN Security Council, September 9, 2021, pg. 7, available at https://www.ecoi.net/en/file/local/2060682/S_2021_784_E.pdf.

⁷⁸ Situation in South Sudan; Report of the Secretary-General, UN Security Council, December 7, 2021, pg. 7, available at https://www.ecoi.net/en/file/local/2065323/S_2021_1015_E.pdf.

⁷⁹ Situation in South Sudan; Report of the Secretary-General, UN Security Council, December 7, 2021, pg. 5–6, available at https://www.ecoi.net/en/file/local/2065323/S_2021_1015_E.pdf.

⁸⁰ Situation in South Sudan, UN Security Council, September 9, 2021, pg. 7, available at https://www.ecoi.net/en/file/local/2060682/S_2021_784_E.pdf.

⁸¹ Situation in South Sudan, UN Security Council, September 9, 2021, pg. 6–7, available at https://www.ecoi.net/en/file/local/2060682/S_2021_784_E.pdf.

⁸² Situation in South Sudan; Report of the Secretary-General [S/2021/1015], UN Security Council, December 7, 2021, pg. 5–6, available at https://www.ecoi.net/en/file/local/2065323/S_2021_1015_E.pdf.

⁸³ Panel of Experts on South Sudan, UN Security Council, April 15, 2021, pg. 16–17, available at

Healthcare and COVID-19

In August 2020, UNHCR reported that “about 56 percent of South Sudan’s population does not have access to primary healthcare services.”⁸⁴ In addition, less than 2 percent of South Sudan’s national budget is spent on healthcare,⁸⁵ resulting in poorly equipped health facilities with limited staff.⁸⁶ In January 2021, UNOCHA reported that “out of approximately 2,300 health facilities, more than 1,300 are non-functional. Of the functioning health facilities, 57 percent are supported by humanitarian and development partners and many remain in areas that are not easily accessible by the communities.”⁸⁷ South Sudan also continues to face “regular outbreaks of infectious diseases like measles, water-borne diseases such as diarrhea and Hepatitis E virus, and vector-borne diseases like malaria and yellow fever,” in addition to the impact of the COVID-19 pandemic.⁸⁸ According to the WFP, the “COVID-19 pandemic continues to present serious risks to an already fragile situation, threatening to further exacerbate acute food insecurity.”⁸⁹ As of January 3, 2022, 16,607 people had contracted COVID-19, including 136 associated deaths.⁹⁰

Economic Situation

According to the World Bank, South Sudan is facing “concurrent setbacks in the economy” due to rising poverty,

<https://reliefweb.int/report/south-sudan/final-report-panel-experts-south-sudan-submitted-pursuant-resolution-2521-2020>.

⁸⁴ Renewed violence and delayed implementation of the peace agreement severely threaten peace and stability in South Sudan, UN experts note, UNHCR, August 14, 2020, available at <https://www.ecoi.net/en/document/2036539.html>.

⁸⁵ South Sudan—Strengthening primary health care in fragile settings, World Health Organization, May 20, 2021, available at <https://www.who.int/news-room/feature-stories/detail/south-sudan-2021>.

⁸⁶ South Sudan Humanitarian Needs Overview 2021 (January 2021), UNOCHA, January 2021, pg. 12, available at https://www.ecoi.net/en/file/local/2045425/south_sudan_2021_humanitarian_needs_overview.pdf.

⁸⁷ South Sudan Humanitarian Needs Overview 2021 (January 2021), UNOCHA, January 2021, pg. 12, available at https://www.ecoi.net/en/file/local/2045425/south_sudan_2021_humanitarian_needs_overview.pdf.

⁸⁸ Strengthening public health surveillance and response using the third Edition Integrated Disease Surveillance and Response guidelines in South Sudan, World Health Organization, November 27, 2021, available at <https://reliefweb.int/report/south-sudan/strengthening-public-health-surveillance-and-response-using-third-edition>.

⁸⁹ South Sudan Country Brief, World Food Programme, November 2021, pg. 1, available at <https://reliefweb.int/report/south-sudan/wfp-south-sudan-country-brief-november-2021>.

⁹⁰ South Sudan COVID-19 Dashboard, World Health Organization, <https://covid19.who.int/region/emro/country/sd> (last visited on January 19, 2022).

food insecurity and a resurgence of conflict.⁹¹ Moreover, falling global oil prices have also affected South Sudan’s oil revenues.⁹² South Sudan’s economy is heavily oil-dependent, with oil accounting for 90 percent of government revenue and nearly all exports.⁹³ This situation has caused a “great percentage of South Sudanese people to lose their sources of livelihood and has left some communities facing catastrophic needs.”⁹⁴ Moreover, urgent and essential measures to manage the COVID-19 pandemic, “worsened economic conditions, disrupting livelihoods and affecting vulnerable households’ access to markets, food and adequate income.”⁹⁵

Based upon this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting South Sudan’s designation for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).

- There continues to be an ongoing armed conflict in South Sudan and, due to such conflict, requiring the return to South Sudan of South Sudanese nationals (or individuals having no nationality who last habitually resided in South Sudan) would pose a serious threat to their personal safety. *See* INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).

- There continue to be extraordinary and temporary conditions in South Sudan that prevent South Sudanese nationals (or individuals having no nationality who last habitually resided in South Sudan) from returning to South Sudan in safety, and it is not contrary to the national interest of the United States to permit South Sudanese TPS beneficiaries to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

⁹¹ South Sudan Economic Update, June 2021: Pathways to Sustainable Food Security, The World Bank, July 2, 2021, available at <https://reliefweb.int/report/south-sudan/south-sudan-economic-update-june-2021-pathways-sustainable-food-security>.

⁹² South Sudan Economic Update, June 2021: Pathways to Sustainable Food Security, The World Bank, July 2, 2021, available at <https://reliefweb.int/report/south-sudan/south-sudan-economic-update-june-2021-pathways-sustainable-food-security>.

⁹³ South Sudan Humanitarian Needs Overview 2021 (January 2021), UNOCHA, January 2021, pg. 12, available at https://www.ecoi.net/en/file/local/2045425/south_sudan_2021_humanitarian_needs_overview.pdf.

⁹⁴ South Sudan Economic Update, June 2021: Pathways to Sustainable Food Security, The World Bank, July 2, 2021, available at <https://reliefweb.int/report/south-sudan/south-sudan-economic-update-june-2021-pathways-sustainable-food-security>.

⁹⁵ South Sudan Humanitarian Response Plan, FAO, May 2021, pg. 2, available at <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-response-plan-2021>.

- The designation of South Sudan for TPS should be extended for an 18-month period, from May 3, 2022, through November 3, 2023. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

- Due to the conditions described above, South Sudan should be simultaneously extended and redesignated for TPS effective May 3, 2022, through November 3, 2023. *See* section 244(b)(1)(A) and (C) and (b)(2) of the Act, 8 U.S.C. 1254a(b)(1)(A) and (C) and (b)(2).

- For the redesignation, the Secretary has determined that TPS applicants must demonstrate that they have continuously resided in the United States since March 1, 2022.

- Initial TPS applicants under the redesignation must demonstrate that they have been continuously physically present in the United States since March 3, 2022, the effective date of the redesignation of South Sudan for TPS.

- There are approximately 97 current South Sudanese TPS beneficiaries who are expected to be eligible to re-register for TPS under the extension.

- It is estimated that approximately 235 additional individuals may be eligible for TPS under the redesignation of South Sudan. This population includes South Sudanese nationals in the United States in nonimmigrant status or without immigration status.

Notice of Extension of the TPS Designation and Redesignation of South Sudan for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, the conditions supporting South Sudan’s designation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am simultaneously extending the existing designation of TPS for South Sudan for 18 months, from May 3, 2022, through November 3, 2023, and redesignating South Sudan for TPS for the same 18-month period. *See* INA section 244(b)(1)(A), (b)(1)(C) and (b)(2); 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C), and (b)(2).

Alejandro N. Mayorkas,
Secretary, U.S. Department of Homeland Security.

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register or re-register for TPS based on the designation of South Sudan, you must submit an Application for

Temporary Protected Status (Form I-821). If you are filing an initial application, you must pay the fee for the Form I-821 or request a fee waiver. If you are filing an application for re-registration, you do not need to pay the fee for the Form I-821. There is no Form I-821 fee for re-registration. See 8 CFR 244.17. You may be required to pay the biometric services fee. If you can demonstrate an inability to pay the biometric services fee, you may request to have the fee waived. Please see additional information under the "Biometric Services Fee" section of this notice.

Through this **Federal Register** notice, your existing EAD issued under the TPS designation of South Sudan with the expiration date of May 2, 2022, is automatically extended for 180 days, through November 1, 2022. If you want to obtain a new EAD valid through November 3, 2023, you must file an Application for Employment Authorization (Form I-765) and pay the Form I-765 fee (or request a fee waiver). If you do not want a new EAD, you do not have to file Form I-765 and pay the Form I-765 fee. If you do not want to request a new EAD now, you may also file Form I-765 at a later date and pay the fee (or request a fee waiver), provided that you still have TPS or a pending TPS application. However, you are strongly encouraged to file your application for a new EAD as early as possible to avoid gaps in the validity of your employment authorization documentation and to ensure that you receive your new EAD by November 1, 2022.

If you are applying for initial registration and want an EAD, you must file and pay the fee for the Form I-765 (or request a fee waiver). If you do not want to request an EAD now, you may also file Form I-765 at a later date and pay the fee (or request a fee waiver), provided that you still have TPS or a pending TPS application. You may file the application for a new EAD either prior to or after your current EAD has expired.

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. In general, TPS beneficiaries, including those who are not employed, are not required to have an EAD. But they can obtain one and if they work, the EAD is an acceptable document that proves their legal right to work.

If you have a Form I-821 or Form I-765 that was still pending as of March 3, 2022, then you do not need to file either application again. If USCIS approves your pending TPS application,

USCIS will grant you TPS through November 3, 2023. Similarly, if USCIS approves your pending TPS-related Form I-765, it will be valid through the same date.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at <https://www.uscis.gov/tps>. Fees for the Form I-821, the Form I-765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must generally submit a biometric services fee. As previously stated, if you can demonstrate an inability to pay the biometric services fee, you may be able to have the fee waived. You may request a fee waiver by submitting a Request for Fee Waiver (Form I-912). For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at www.uscis.gov/tps. USCIS may require you to visit an Application Support Center so we can capture your biometrics. For additional information on the USCIS biometrics screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at www.dhs.gov/privacy.

Refiling a TPS Initial Registration Application After Receiving Notice That USCIS Did Not Grant the Fee Waiver Request

You should file as soon as possible so USCIS can process your application and issue any EAD promptly, if you requested one. If USCIS denies your fee waiver request related to your initial TPS application, you must refile your Form I-821 for TPS along with the required fees no later than November 3, 2023, to continue seeking initial TPS. If USCIS does not grant your fee waiver request, you may also refile your Form I-765, with fee, either with your Form I-821 or at a later time as long as it is within the period that South Sudan is designated for TPS, if you choose.

Note: Unless USCIS grants a fee waiver, an initial applicant for TPS must pay the Form I-821 filing fee and applicants age 14 or older must also pay the biometric services fee. However, if you decide to wait to request an EAD, you do not have to file the Form I-765 or pay the associated Form I-765 fee (or request a fee waiver) at the time of registration. You may wait to seek an EAD until after USCIS has approved your TPS registration application or at any later date you decide you want to request an EAD as long as TPS for South Sudan continues. To register for TPS, you only need to file the Form I-821 with the \$50 filing fee and the

biometric services fee, if applicable (or request a fee waiver).

Refiling a TPS Re-Registration Application After Receiving Notice That the Fee Waiver Request Was Not Granted

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue any EAD promptly, if you requested one. Properly filing early will also give you time to refile your application before the deadline, if USCIS does not grant your fee waiver request. If you receive a notice that USCIS did not grant your fee waiver request, and you are unable to refile by the re-registration deadline, you may still refile your Form I-821 with the biometrics fee. USCIS will review this situation to determine whether you established good cause for late TPS re-registration. However, if possible, we urge you to refile within 45 days of the date on any USCIS notice that we did not grant you a fee waiver. See INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(b). For more information on good cause for late re-registration, visit the USCIS TPS web page at <https://www.uscis.gov/tps>. If USCIS does not grant your fee waiver request, you may also refile your Form I-765 with the fee either with your Form I-821 or at a later time, if you choose.

Note: A re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the Form I-821 filing fee), or request a fee waiver, when filing a TPS re-registration application. However, if you decide to wait to request an EAD, you do not have to file the Form I-765 or pay the associated Form I-765 fee (or request a fee waiver) at the time of re-registration. You may wait to seek an EAD until after USCIS has approved your TPS re-registration application or at any later date you decide you want to request an EAD. To re-register for TPS, you only need to file the Form I-821 with the biometric services fee, if applicable (or request a fee waiver).

Filing Information

USCIS offers the option to applicants for TPS under South Sudan's designation to file Form I-821 and related requests for EADs online or by mail. When filing a TPS application, applicants can also request an EAD by submitting a completed Form I-765, Application for Employment Authorization, with their Form I-821.

Online filing: Form I-821 and I-765 are available for concurrent filing

online.⁹⁶ To file these forms online, you must first create a USCIS online account.⁹⁷ Online filing is not available for applicants requesting a fee waiver. Such applications should be completed by mail.

Mail filing: Mail your application for TPS to the proper address in Table 1.

Table 1—Mailing Addresses

Mail your completed Application for Temporary Protected Status (Form I-

821) and Application for Employment Authorization (Form I-765), Request for Fee Waiver (Form I-912) (if applicable) and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If you would like to send your application by:	Then, mail your application to:
U.S. Postal Service	USCIS, Attn: TPS South Sudan, P.O. Box 6943, Chicago, IL 60680-6943.
FedEx, UPS, or DHL	USCIS, Attn: TPS South Sudan (Box 6943), 131 S Dearborn St. 3rd Floor, Chicago, IL 60603-5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. When you are re-registering and requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us to verify your grant of TPS and process your application.

Supporting Documents

The filing instructions on the Form I-821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable

documentation and other requirements for applying or registering for TPS on the USCIS website at www.uscis.gov/tps under “South Sudan.”

Travel

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file an application for advance parole if you wish to travel outside the United States. Advance parole gives you permission to leave the United States and return during a specific period. TPS beneficiaries retain the same immigration status they had prior to the travel. To request advance parole, you must file Form I-131, Application for Travel Document, available at www.uscis.gov/i-131. You may file Form

I-131 together with your Form I-821 or separately. When filing the Form I-131, you must:

- Select Item Number 1.d. in Part 2 on the Form I-131; and
- Submit the fee for the Form I-131, or request a fee waiver, which may be submitted on Request for Fee Waiver (Form I-912)

If you are filing Form I-131 together with Form I-821, send your forms to the address listed in Table 1 above. If you are filing Form I-131 separately based on a pending or approved Form I-821, send your form to the address listed in Table 2 below and include a copy of Form I-797 for the approved or pending Form I-821.

TABLE 2—MAILING ADDRESSES

If you . . .	Mail to . . .
Are filing Form I-131 together with a Form I-821, Application for Temporary Protected Status.	U.S. Postal Service (USPS): USCIS, Attn: TPS South Sudan, P.O. Box 6943, Chicago, IL 60680-6943. FedEx, UPS, or DHL: USCIS, Attn: TPS South Sudan (Box 6943), 131 S Dearborn St. 3rd Floor, Chicago, IL 60603-5517.
Are filing Form I-131 based on a pending or approved Form I-821 You must include a copy of the receipt notice (Form I-797C) showing we accepted or approved your Form I-821.	U.S. Postal Service (USPS): USCIS, Attn: I-131 TPS, P.O. Box 660167, Dallas, TX 75266-0867. FedEx, UPS, or DHL: USCIS, Attn: I-131 TPS, 2501 S State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, including the status of an EAD request, you can check Case Status Online at <https://www.uscis.gov>, or visit the USCIS Contact Center at uscis.gov/contactcenter. If your Form I-765 has

been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at egov.uscis.gov/e-request/Intro.do or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

Am I eligible to receive an automatic 180-day extension of my current EAD through November 1, 2022, using this **Federal Register** notice?

Yes. Regardless of your country of birth, provided that you currently have a South Sudan TPS-based EAD with an

expiration date of September 17, 2021, on the face of the card, bearing the notation A-12 or C-19 under Category, this notice automatically extends your EAD through November 1, 2022. Although this **Federal Register** notice automatically extends your EAD through November 1, 2022, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS and employment authorization.

⁹⁶ Find information about online filing at Forms Available to File Online, <https://www.uscis.gov/file-online/forms-available-to-file-online>.

⁹⁷ https://myaccount.uscis.gov/users/sign_up.

When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Form I-9?

You can find the Lists of Acceptable Documents on the third page of Form I-9 as well as the Acceptable Documents web page at <https://www.uscis.gov/i-9-central/acceptable-documents>.

Employers must complete Form I-9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I-9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization), or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt for List A, List B, or List C documents as described in the Form I-9 instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I-9 on the I-9 Central web page at <https://www.uscis.gov/I-9Central>.

An EAD is an acceptable document under List A. See the section “How do my employer and I complete Form I-9 using my automatically extended EAD for a new job?” of this **Federal Register** notice for further information. If your EAD has an expiration date of May 2, 2022, and states A-12 or C-19 under Category, it has been extended automatically by virtue of this **Federal Register** notice and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I-9 through November 1, 2022, unless your TPS has been withdrawn or your request for TPS has been denied.

What documentation may I present to my employer for Form I-9 if I am already employed but my current TPS-related EAD is set to expire?

Even though we have automatically extended your EAD, your employer is required by law to ask you about your continued employment authorization. Your employer may need to re-inspect your automatically extended EAD to check the Card Expires date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the Card Expiration date and Category code, your employer should update the EAD

expiration date in Section 2 of Form I-9. See the section “What updates should my current employer make to Form I-9 if my EAD has been automatically extended?” of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I-9 and to show that USCIS has automatically extended your EAD through November 1, 2022, but you are not required to do so. The last day of the automatic EAD extension is November 1, 2022. Before you start work on November 2, 2022, your employer is required by law to reverify your employment authorization on Form I-9. By that time, you must present any document from List A or any document from List C on Form I-9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I-9 instructions to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

Can my employer require that I provide any other documentation to prove my status, such as proof of my South Sudanese citizenship or a Form I-797C showing I re-registered for TPS?

No. When completing Form I-9, including reverifying employment authorization, employers must accept any documentation that appears on the Form I-9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers do not need to reverify List B identity documents. Therefore, employers may not request proof of South Sudanese citizenship or proof of re-registration for TPS when completing Form I-9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document so long as the EAD reasonably appears to be genuine and relates to you. Refer to the Note to Employees section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

How do my employer and I complete Form I-9 using my automatically extended EAD for a new job?

1. When using an automatically extended EAD to complete Form I-9 for a new job before November 2, 2022, for Section 1, you should:

a. Check “An alien authorized to work until” and enter November 1, 2022, as the “expiration date”; and

b. Enter your Alien Number/USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended by ensuring it is in category A-12 or C-19 and has a Card Expires date of May 2, 2022;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write November 1, 2022, as the expiration date.

Before the start of work on November 2, 2022, employers must reverify the employee’s employment authorization on Form I-9.

What updates should my current employer make to Form I-9 if my EAD has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-inspect your current EAD if they do not have a copy of the EAD on file. Your employer should determine if your EAD is automatically extended by ensuring that it contains Category A-12 or C-19 and has a Card Expires date of May 2, 2022, on the front of the card.

If your employer determines that USCIS has automatically extended your EAD, your employer should update Section 2 of your previously completed Form I-9 as follows:

1. Write EAD EXT and November 1, 2022, as the last day of the automatic extension in the Additional Information field; and

2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not reverify the employee until either the 180-day automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By November 2, 2022, when the employee’s automatically extended EAD has expired, employers are required by law to reverify the employee’s employment authorization on Form I-9.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the number from the Document Number field on Form I-9 into the document number field in E-Verify. Employers should enter November 1, 2022, as the expiration date for an EAD that has been extended under this **Federal Register** notice.

If I am an employer enrolled in E-Verify, what do I do when I receive a “Work Authorization Documents Expiring” alert for an automatically extended EAD?

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have employees who provided a TPS-related EAD when they first started working for you, you will receive a “Work Authorization Documents Expiring” case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on November 2, 2022, you must reverify their employment authorization on Form I-9. Employers may not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888-464-4218 (TTY 877-875-6028) or email USCIS at I-9Central@uscis.dhs.gov. USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I-9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800-255-8155 (TTY 800-237-2515). IER offers language interpretation in numerous languages. Employers may also email IER at IER@usdoj.gov.

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888-897-7781 (TTY 877-875-6028) or email USCIS at I-9Central@uscis.dhs.gov.

uscis.dhs.gov. Calls are accepted in English, Spanish, and many other languages. Employees or applicants may also call the IER Worker Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Form I-9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I-9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I-9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of Tentative Nonconfirmation (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from an employee's Form I-9 differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of the TNC while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY 877-875-6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800-255-7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory Form I-9 and E-Verify procedures is available on the IER website at <https://www.justice.gov/ier> and on the USCIS and E-Verify websites at <https://www.uscis.gov/i-9-central> and <https://www.e-verify.gov>.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, TPS beneficiaries presenting an automatically extended EAD referenced

in this **Federal Register** notice do not need to show any other document, such as an I-797C Notice of Action or this **Federal Register** notice, to prove that they qualify for this extension.

However, while Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine whether you have TPS or other immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A-12 or C-19;
- Your Form I-94, Arrival/Departure Record;
- Your Form I-797, Notice of Action, reflecting approval of your Form I-765; or
- Your Form I-797, the notice of approval, for a past or current Form I-821, if you received one from USCIS.

Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use USCIS' Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. While SAVE can verify when an individual has TPS, each agency's procedures govern whether they will accept an unexpired EAD, Form I-797, or Form I-94, Arrival/Departure Record. If an agency accepts the type of TPS-related document you are presenting, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Present the agency with a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-number, USCIS number or Form I-94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at save.uscis.gov/casecheck/. CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (A-number, USCIS number or Form I-94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, www.uscis.gov/save, has detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2022-04573 Filed 3-2-22; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORM00000-L12200000.DF0000-223.HAG22-0009]

Call for Nominations for the Western Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to request public nominations for the Bureau of Land Management's (BLM) Western Oregon Resource Advisory Council (RAC) to fill vacant positions and positions that will become vacant. The RAC provides advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within its geographic area.

DATES: The Medford District Office will accept public nominations until April 4, 2022.

ADDRESSES: Nominations and completed applications should be sent to Kyle Sullivan, Public Affairs Specialist, Medford District, 3040 Biddle Road,

Medford, OR 97504; Attention: Western Oregon RAC Nominations; or emailed to ksullivan@blm.gov with the subject line "Western Oregon RAC Nominations."

FOR FURTHER INFORMATION CONTACT: Kyle Sullivan, Public Affairs Specialist, Medford District, telephone: (541) 618-2340; email: ksullivan@blm.gov.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Sullivan. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the U.S.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM, through the establishment of 10- to 15-member citizen-based advisory councils that are managed in accordance with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784.

The RAC is seeking nominations in the following categories:

Category One—Holders of Federal grazing permits or leases within the area for which the RAC is organized; represent interests associated with transportation or rights-of-way; represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities; represent the commercial timber industry; or represent energy and mineral development.

Category Two—Representatives of nationally or regionally recognized environmental organizations; dispersed recreational activities; archaeological and historical interests; or nationally or regionally recognized wild horse and burro interest groups.

Category Three—Hold State, county, or local elected office; are employed by a State agency responsible for the management of natural resources, land, or water; represent Indian tribes within or adjacent to the area for which the RAC is organized; are employed as academicians in natural resource management or the natural sciences; or represent the affected public at large.

Individuals may nominate themselves or others. If you have already applied in 2020 or 2021, your nomination is still being considered and you do not need

to reapply. Nominees must be residents of the State of Oregon. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

—A completed RAC application, which can either be obtained through your local BLM office or online at: https://www.blm.gov/sites/blm.gov/files/1120-019_0.pdf.

—Letters of reference from represented interests or organizations; and

—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, the BLM will issue a press release providing additional information for submitting nominations.

(Authority: 43 CFR 1784.4-1)

Elizabeth R. Burghard,

Medford District Manager.

[FR Doc. 2022-04428 Filed 3-2-22; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS00000-L10200000.XX0000-223L1109AF]

Northwest Resource Advisory Council Schedule of Quarterly Public Meetings, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Colorado's Northwest Resource Advisory Council (RAC) is announcing two public meetings.

DATES: The Northwest RAC will meet in 2022 as follows:

- The RAC will host a field tour on May 25 and a virtual meeting on May 26 from 10 a.m. to 3 p.m.
- The RAC will host a field tour on September 14 and a virtual meeting on September 15 from 10 a.m. to 3 p.m.

Both field tours will be held from 8 a.m. to 4 p.m. All field tours and meetings are open to the public.

ADDRESSES:

- The May 25 field tour will commence at the Kremmling Field

Office, 2103 E Park Ave., Kremmling, CO 80459. Attendees will then travel to the North Sand Hills Special Recreational Management Area (SRMA).

- The September 14 field tour will commence at the Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO 81652. Attendees will then travel to the Roan Plateau.

The virtual meetings will be held via the Zoom platform. Registration and participation will be available on the RAC's web page 30 days in advance of the meetings on the RAC's web page at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/northwest-rac>.

Send written comments to the Northwest RAC at least 1 week in advance of the meetings to BLM Northwest District Office, Attn. Chris Maestas, Public Affairs Specialist, 455 Emerson St., Craig, CO 81625; email: cjmaestas@blm.gov. Please include "RAC Comment" in your submission.

FOR FURTHER INFORMATION CONTACT:

Chris Maestas, Public Affairs Specialist, email: cjmaestas@blm.gov; telephone: (970) 826-5000. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Chris Maestas. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member Northwest Colorado RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in the Northwest and Upper Colorado River Districts, including the White River, Kremmling, Little Snake Field Offices, Colorado River Valley, and Grand Junction Field Offices and the the Dominguez-Escalante and McInnis Canyons National Conservation Areas. The Northwest RAC will conduct a field tour on May 25 to the North Sand Hills Special Recreation Management Area located within the Kremmling Field Office. The May 26 virtual meeting will focus on recreation and travel management issues within the Northwest RAC's jurisdiction and field manager updates. The Northwest RAC will conduct a field tour on September 14 to a grazing allotment located within the Colorado River Valley Field Office. The September 15 virtual meeting will include a review and discussion on the role of virtual fencing in grazing management and field manager updates.

Public comment periods are scheduled for 2 p.m. at the May and September meetings. Contingent on the number of people who wish to comment during the public comment period, individual comments may be limited. Written comments received at least 1 week in prior to the meetings will be provided in advance to RAC members (see **ADDRESSES**).

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Members of the public are welcome on field tours but must provide their own transportation and meals. Individuals who plan to attend must RSVP to the BLM Northwest District Office at least 1 week in advance of the field tours to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Those who need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM (see **FOR FURTHER INFORMATION CONTACT**). The field tours will follow current Centers for Disease Control and Prevention COVID-19 guidance regarding social distancing and wearing of masks. Additional information regarding the meetings will be available on the Northwest RAC's web page at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/northwest-rac>.

Summary minutes for the Northwest RAC meetings will be maintained in the Northwest District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Previous minutes and agendas are also available on the RAC's web page.

(Authority: 43 CFR 1784.4-2)

Stephanie Connolly,

BLM Colorado Acting State Director.

[FR Doc. 2022-04427 Filed 3-2-22; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0033464; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Cheekwood Estate and Gardens, Nashville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Cheekwood Estate and Gardens (Cheekwood), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of either sacred objects or objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Cheekwood Estate and Gardens. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Cheekwood Estate and Gardens at the address in this notice by April 4, 2022.

FOR FURTHER INFORMATION CONTACT: Hannah Morgan, Cheekwood Estate and Gardens, 1200 Forrest Park Drive, Nashville, TN 37205, telephone (615) 353-2160, email hmorgan@cheekwood.org.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Cheekwood Estate and Gardens, Nashville, TN, that meet the definition of either sacred objects or objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National

Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1960, Cheekwood received on loan eight sacred objects and three objects of cultural patrimony. In 1972, Cheekwood formally accessioned these objects. The eight sacred objects are one t-type pipestone pipe bowl; one ribbon-wrapped pipe stem attributed to *Taoyate Duta* (Chief Little Crow); one beaded, twisted and painted pipe stem; one beaded, velvet pipe bag; one eagle claw pipestone pipe bowl; one ribbon-wrapped pipe stem; one war shield; and one whip handle. The three objects of cultural patrimony are one stone maul, one stone mace, and one bow with lightning design.

Based on consultation with representatives of the Prairie Island Indian Community in the State of Minnesota, Cheekwood has determined the identity of these 11 cultural items and their cultural affiliation with this Indian Tribe.

Determinations Made by the Cheekwood Estate and Gardens

Officials of the Cheekwood Estate and Gardens have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the eight cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the three cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and objects of cultural patrimony and the Prairie Island Indian Community in the State of Minnesota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Hannah Morgan, Cheekwood Estate and Gardens, 1200 Forrest Park Drive, Nashville, TN 37205, telephone (615) 353-2160, email hmorgan@cheekwood.org, by April 4, 2022. After that date, if no additional claimants have come forward, transfer of control

of the sacred objects and objects of cultural patrimony to the Prairie Island Indian Community in the State of Minnesota may proceed.

The Cheekwood Estate and Gardens is responsible for notifying the Prairie Island Indian Community in the State of Minnesota that this notice has been published.

Dated: February 23, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022-04446 Filed 3-2-22; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0033465; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Boston University, Boston, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Boston University, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet both the definition of sacred objects and the definition of objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to Boston University. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Boston University at the address in this notice by April 4, 2022.

FOR FURTHER INFORMATION CONTACT: Kathryn M. Mellouk, Associate Vice President for Research Compliance, Boston University, One Silber Way, 9th floor, Boston, MA 02215, telephone (617) 358-4730, email kateski@bu.edu.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of Boston

University, Boston, MA, that meet both the definition of sacred objects and the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Sometime prior to November 3, 1936, two cultural items were removed from an unknown location in Montana. These items (inventory numbers 1591 and 1592) were collected or acquired by Charles Herbert Mitchell (1857-1936). In 1936, Mr. Mitchell's family donated a portion of his collection, including these items, to Boston University. The two sacred objects/objects of cultural patrimony are two pipestone vessels.

Based on information provided by the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana during consultation and in the Tribe's repatriation request, the institution has determined that the pipestone vessels are culturally affiliated with the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana, and that they meet both the definition of sacred objects and the definition of objects of cultural patrimony.

Determinations Made by Boston University

Officials of Boston University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the two cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the two cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and objects of cultural patrimony and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Kathryn M. Mellouk, Associate Vice President for Research Compliance, Boston University, One Silber Way, 9th floor, Boston, MA 02215, telephone (617) 358-4730, email kateski@bu.edu, by April 4, 2022. After that date, if no additional claimants have come forward, transfer of control of the sacred objects and objects of cultural patrimony to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana may proceed.

Boston University is responsible for notifying the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana that this notice has been published.

Dated: February 23, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022-04447 Filed 3-2-22; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF JUSTICE

[OMB 1103-0119]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension

AGENCY: Department of Justice, Justice Management Division, Security and Emergency Planning Staff.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Justice Management Division, Security and Emergency Planning Staff (SEPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 2, 2022.

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 Security and Emergency Planning Staff, 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.

2. *The Title of the Form/Collection:* Department Personnel Security Reporting Requirements, iReport Forms and PDF Fillable Forms:

- a. *Self-Reporting of Arrests*
- b. *Self-Reporting of Allegations of Misconduct*
- c. *Self-Reporting of Personal Foreign Travel*
- d. *Self-Reporting of Contact with Foreign Nationals*
- e. *Self-Reporting of Possession/ Application for Foreign Passport or Identity Card*
- f. *Self-Reporting on Other Foreign Matters*
- g. *Self-Reporting of Roommate/ Cohabitant/Marriage*
- h. *Self-Reporting of Alcohol or Drug Related Addiction or Treatment*
- i. *Self-Reporting of Attempted Elicitation, Exploitation, Blackmail, Coercion or Enticement to Obtain Information*
- j. *Self-Reporting of Financial Issues/ Delinquencies*
- k. *Self-Reporting of Unofficial Contact with the Media*
- l. *Reportable Activities of Other Covered Personnel*

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

iReport and Fillable PDF Forms for each item in No. 2 above.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals.

Individuals who are contractors for the Department of Justice or who are processed for access to classified information by the Department of Justice.

Abstract: Self-reporting requirements set forth in the Department of Justice (DOJ) Policy Statement 1700.04, *Department Personnel Security Reporting Requirements*, issued April 18, 2018, apply to non-federal employee personnel affiliated with the DOJ. The policy contains reporting requirements that are applicable to the entire DOJ workforce as well as reporting requirements that apply only to personnel occupying a national security position or who have access to classified information. The requirements relating to national security are mandated by the Director of National Intelligence as the Security Executive Agent. The majority of the reports relate to the submitter's personal conduct and activities. There is one form for personnel to submit information on other personnel, consistent with government-wide reporting requirements. This collection request seeks approval for contractors and other non-federal employees who are processed for access to classified information to utilize the Department's automated reporting system called iReport, or, for the small population with no access to the IT system, to utilize PDF fillable forms to report the required information. The Security and Emergency Planning Staff, and other Department Security Offices, will use the reported information to determine the submitter's continued fitness for employment at the Department of Justice or continued eligibility for access to national security information. The Department security offices for each agency component will review, evaluate, and adjudicate the information received.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. Department-wide population covered by the requirement to self-report information in the forms listed in Sections 2a and 2b is estimated at 57,744. It is estimated that only three percent (1,732) will actually need to self-report.

b. Department-wide population covered by the requirement to report information in the forms listed in

Sections 2c through 2l is estimated to be 604.

c. Amount of time estimated for an average reported is less than ten minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* 389 annual burden hours.

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 28, 2022.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022-04513 Filed 3-2-22; 8:45 am]

BILLING CODE 4410-BA-P

DEPARTMENT OF JUSTICE

[OMB Number 1105-0094]

Agency Information Collection Activities; Proposed eCollection Activities; Comments Requested; Extension With Change, of a Previously Approved Collection; Applications for Special Deputation

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The U.S. Marshals Service (USMS), 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 April 4, 2022.

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

Type of Information Collection: Extension with change of a currently approved collection.

The Title of the Form/Collection: Applications for Special Deputation.

The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form number: Form USM-3A and USM-3C.

Component: U.S. Marshals Service, U.S. Department of Justice.

Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Federal government and State/local government.

Other: [None].

Abstract: The collection of information for these forms is authorized by 28 U.S.C. 562. The USMS is authorized to deputize selected persons to perform the functions of a Special Deputy U.S. Marshal whenever the law enforcement needs of the USMS so require and as designated by the Associate Attorney General pursuant to 28 CFR 0.19(a)(3). USMS Special Deputation files serve as a centralized record of the special deputations granted by the USMS to assist in tracking, controlling and monitoring the Special Deputation Program.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 6,000 respondents will complete a 15 minute form (Form USM-3A) and 5,500 respondents will complete a 10 minute form (Form USM-3C).

An estimate of the total public burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 1 hour,

which is equal to (14 (total # of annual responses) * 4 minutes = 56 minutes or 1 hour).

An Explanation of the Change in Estimates: N/A.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 28, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022-04511 Filed 3-2-22; 8:45 am]

BILLING CODE 4410-04-P

OFFICE OF MANAGEMENT AND BUDGET

Proposal To Extend the Information Collection 0348-0065

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) is proposing to extend the information collection 0348-0065 it uses for members of the public who request a meeting with OIRA on rules under review at the time pursuant to Executive Order 12866. The information collected would be subject to the Paperwork Reduction Act (PRA) and this notice announces and requests comment on OIRA's proposal for such a collection.

DATES: May 2, 2022.

ADDRESSES: Submit comments by the following method:

- *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.

Instructions: Please submit comments only and cite Information Collection 0348-0065 in all correspondence related to this collection. To confirm receipt of your comment(s), please check [regulations.gov](https://www.regulations.gov), approximately two to three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT:

Oira_submission@omb.eop.gov, Lisa Jones, 202–395–5897.

SUPPLEMENTARY INFORMATION:

Title: Information on Meetings with Outside Parties Pursuant to Executive Order 12866.

Abstract: Executive Order 12866, “Regulatory Planning and Review,” issued by President Clinton on September 30, 1993, establishes and governs the process under which OIRA reviews agency draft proposed and final regulatory actions. The Executive Order also establishes a disclosure process regarding the OIRA Administrator’s (or his/her designee’s) meetings with outside parties during formal review of a regulatory action if such meetings occur. In such instances, OIRA would disclose the subject, date, and participants of the meeting on the *Reginfo.gov* website, as well as any materials provided to OIRA at such meetings.

These meetings occur at the initiative and request of outside parties who seek to present views about a regulatory action under OIRA review. Members of the public who request meetings may invite other outside parties to attend, and OIRA invites representatives from the agency or agencies that would issue the regulatory action. If such meetings occur, OIRA does not take minutes during the meeting but would, however, posts on *RegInfo.gov* any written materials provided by outside parties during these meetings, including the initial meeting request.

To help ensure transparency associated with meetings pursuant to Executive Order 12866, OIRA would collect—and then post publicly—the following information from outside parties that request a meeting with OIRA to present their views on a regulatory action currently under review:

- Names of all attendees who will be present at the meeting from the outside party or parties. Each attendee’s organization or affiliation. If an attendee is representing another organization, the name of the organization the attendee is representing.
 - The name of the regulatory action under review on which the party would like to present its views.
 - Electronic copies of all of briefing materials that will be used during the presentation.
 - An acknowledgment by the requesting party that all information submitted to OIRA pursuant to this collection and meeting request will be made publicly available at *Reginfo.gov*.
- OIRA welcomes any and all public comments on the proposed collection of

information such as the accuracy of OIRA’s burden estimate, the practical utility of collecting this information, and whether there are additional pieces of information that could be collected from meeting requestors to further the disclosure provisions of Executive Order 12866.

Current actions: Proposal for extending an existing information collection requirement.

Type of review: Extension.

Affected public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Governments.

Expected average annual number of respondents: 300.

Average annual number of responses per respondent: 2.

Total number of responses annually: 600.

Burden per response: 15 minutes.

Total average annual burden: 150 hours.

Request for comments: OMB anticipates that comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 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.

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.

Dominic J. Mancini,

Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2022–04430 Filed 3–2–22; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–015)]

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, March 30, 2022, 11:00 a.m.–5:00 p.m. Eastern Time; and Thursday, March 31, 2022, 11:00 a.m.–5:00 p.m., Eastern Time.

ADDRESSES: Meeting will be virtual only. See WebEx and audio dial-in information below under

SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Mrs. KarShelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, or *karshelia.kinard@nasa.gov*.

SUPPLEMENTARY INFORMATION: As noted above, this meeting will be available to the public telephonically and by WebEx only. Any interested person may join via Webex Wednesday, March 30, 2022 at <https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=mebf0d01936eb4589c0a0eff3ffafcf2a>. The meeting number for Wednesday, March 30, 2022 is 2761 516 5142, and meeting password is APACspring0330#.

Any interested person may join via Webex Thursday, March 31, 2022 <https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m6bf6d15c8f4ff0c7a965d8f05ea5a25f>. The meeting number for Thursday, March 31, 2022 is 2762 891 9996, and the password is APACspring0331#.

You may join by phone by dialing toll number 1-929-251-9612 or 1-415-527-5035, both days.

The agenda for the meeting includes the following topics:

- Astrophysics Division Update
- Updates on Specific Astrophysics Missions
- Reports from the Program Analysis Groups

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://nasa.cnf.io/sessions/cde7/#!/dashboard> that will be opened for input on March 15, 2022. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 2022-04440 Filed 3-2-22; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Mathematical and Physical Sciences (#66).

Date and Time: March 29, 2022; 12:00 p.m. to 5:00 p.m.

March 30, 2022; 12:05 p.m. to 4:45 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual attendance only). To attend the virtual meeting, please send your request for the virtual meeting link to Michelle Bushey at the following email address: mbushey@nsf.gov.

Type of Meeting: Open.

Contact Person: Leighann Martin, National Science Foundation, 2415 Eisenhower Avenue, Room C 9000, Alexandria, Virginia 22314; Telephone: 703/292-4659.

Summary of Minutes: Minutes and meeting materials will be available on the MPS Advisory Committee website at <http://www.nsf.gov/mps/advisory.jsp> or can be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to MPS programs and activities.

Agenda

Tuesday, March 29, 2022

- Call to Order and Official Opening of the Meeting
- Approval of Prior Meeting Minutes—Catherine Hunt, MPSAC Chair
- MPS Update by Assistant Director
- Science Highlight
- MPS and the Living World Subcommittee Report—AC Vote
- MPS Facilities Portfolio Overview and Discussion
- MPS AC Subcommittee on Facilities and Infrastructure—AC Vote
- MPS AC Subcommittee on Facilities and Infrastructure—Charge 2
- CEOSE Updates
- Preparation for discussion with NSF Director and COO
- Closing remarks and adjourn day 1

Wednesday, March 30, 2022

- Welcome and overview of agenda
- Science Highlight
- Environmental Research and Education (ERE) AC Outbrief and Panel
- Measuring MPS Impact
- Preparation for discussion with NSF Director and COO
- Meeting and discussion with NSF Director and COO
- Closing remarks and adjourn

Dated: February 25, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022-04414 Filed 3-2-22; 8:45 am]

BILLING CODE 7555-01-P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Audit Committee Meeting

TIME AND DATE: 2:00 p.m., Thursday, March 10, 2022.

PLACE: Via Conference Call.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audit Committee Meeting.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

Agenda

- I. Call to Order
- II. FY21 External Audit—BDO
- III. Sunshine Act Approval of Executive (Closed) Session
- IV. Executive Session with External Auditors—BDO
- V. Executive Session with Chief Audit Executive
- VI. Action Item Approval of FY21 External Audit
- VII. Action Item HPN Launchpad Acquisition Audit Report
- VIII. Internal Audit Status Reports
 - a. Internal Audit Reports Awaiting Management's Response
 - Finance—Accounts Payable/ACH Transactions (NetSuite) FY21
 - b. ITS Road Map IAM Dependency
 - c. Internal Audit Performance Scorecard
 - d. Implementation of Internal Audit Recommendations
- IX. Adjournment

CONTACT PERSON FOR MORE INFORMATION:

Lakeyia Thompson, Special Assistant, (202) 524-9940; Lthompson@nwg.org.

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2022-04604 Filed 3-1-22; 11:15 am]

BILLING CODE 7570-02-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Charter Renewal

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of charter renewal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has determined that renewal of the charter for the Advisory Committee of the Medical Uses of Isotopes (ACMUI) until February 28, 2024, is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Donald Lowman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 415-5452 or at Donald.Lowman@nrc.gov.

SUPPLEMENTARY INFORMATION: The purpose of the ACMUI is to provide advice to the NRC on policy and technical issues that arise in regulating

the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; nuclear pharmacy; State medical regulation; patient's rights and care; health care administration; and Food and Drug Administration regulation.

Dated at Rockville, Maryland, this 28th day of February, 2022.

For the U.S. Nuclear Regulatory Commission.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

[FR Doc. 2022-04463 Filed 3-2-22; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2021-0143]

Cyber Security Programs for Nuclear Power 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-5061, Revision 1, "Cyber Security Programs for Nuclear Power Reactors." DG 5061, Revision 1, incorporates reference to industry whitepapers on identifying safety, important to safety, balance of plant, and emergency preparedness Critical Digital Assets. It

also clarifies guidance on defense-in-depth for cyber security and includes updated text based on the latest National Institute of Standards and Technology (NIST) and International Atomic Energy Agency cyber security guidance. Specifically, this proposed revision clarifies issues identified from cyber security inspections, insights gained through the Security Frequently Asked Questions (SFAQ) process, documented cyber security attacks, new technologies, and new regulations. This proposed revision also considers the changes in the most recent revision to the NIST Special Publications (SP) 800-53, upon which Revision 0 of Regulatory Guide (RG) 5.71, "Cyber Security Programs for Nuclear Facilities" was based.

DATES: Submit comments by May 2, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: 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-2021-0143. 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: Kim Lawson-Jenkins, Office of Nuclear Security and Incident Response, telephone: 301-287-3656, email: Kim.Lawson-Jenkins@nrc.gov and Mekonen Bayssie, Office of Nuclear Regulatory Research, telephone: 301-415-1699, email: Mekonen.Bayssie@nrc.gov. Both 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-2021-0143 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-2021-0143.
- *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.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to 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-2021-0143 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 and make available to the public information regarding 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 "Cyber Security Programs for Nuclear Power Reactors," is temporarily identified by its task number, DG-5061, Revision 1 (ADAMS Accession No. ML21095A329) is a proposed revision to RG 5.71, "Cyber Security Programs for Nuclear Facilities." It provides NRC licensees with guidance on meeting the cyber security requirements described in section 73.54 of title 10 of the *Code of Federal Regulations* (10 CFR), "Protection of digital computer and communication systems and networks."

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML21130A636). The staff developed the regulatory analysis to assess the value of revising RG 5.71 as well as alternative courses of action.

DG-5061, Revision 1, clarifies issues identified from cyber security inspections, insights gained through the SFAQ process, lessons learned from international and domestic cyber security attacks, new technologies, and new regulations. In addition, it considers changes in NIST SP 800-53, upon which Revision 0 of RG 5.71 was based. In 2010, the Commission issued Staff Requirements Memorandum (SRM), SRM-COMWCO-10-0001 (ADAMS Accession No. ML102940009) which clarified the scope of the cyber security rule regarding balance of plant (BOP) systems. This proposed revision to RG 5.71 includes guidance for structures, systems, and components in the BOP systems.

III. Backfitting, Forward Fitting, and Issue Finality

DG-5061, Revision 1, if finalized, would revise RG 5.71, which describes methods acceptable for use by nuclear power plant licensees in meeting the requirements for the cyber security requirements in 10 CFR 73.54. Issuance

of DG-5061 Revision 1, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, "Backfitting," and as described in NRC Management Directive (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests"; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, "Licenses, certifications, and approvals for nuclear power plants." As explained in DG-5061 Revision 1, applicants and licensees would not be required to comply with the positions set forth in DG-5061.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the "Regulatory Guide" series.

Dated: February 28, 2022.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2022-04464 Filed 3-2-22; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2022-0054]

Guidance for the Application of Radiological Sabotage Design-Basis Threat in the Design, Development, and Implementation of a Physical Security Program That Meets 10 CFR 73.55 Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 5.69, "Guidance for the Application of Radiological Sabotage Design-Basis Threat in the Design, Development, and Implementation of a Physical Security Program that Meets 10 CFR 73.55 Requirements," as a final RG. RG 5.69 provides a method that the NRC staff finds acceptable for an applicant or licensee to use in applying the design-

basis threats (DBTs) in the development of a physical security program that meets the requirements of NRC regulations. Through interactions with stakeholders during physical security inspections, including security baseline inspections, force-on-force exercises, and enforcement activities, the NRC identified areas where a need for additional clarity and/or sufficient technical information is warranted. Revision 1 to RG 5.69 addresses these areas. In addition, revisions to this guidance include changes to the DBT adversary characteristics necessary to align with changes to NRC security requirements made since the publication of Revision 0 to RG 5.69 in 2007.

DATES: Revision 1 to RG 5.69 is available on March 3, 2022.

ADDRESSES: Please refer to Docket ID NRC-2022-0054 when contacting the NRC about the availability of information regarding this document. Revision 1 to RG 5.69 contains Safeguards Information (SGI). Therefore, this RG is being withheld from public disclosure, but is available to those affected licensees and cleared stakeholders who qualify for access and have a demonstrated need-to-know. For access to Revision 1 to RG 5.69, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nirya Simonian, Office of Nuclear Security and Incident Response, telephone: 301-287-3636, email: Nirya.Simonian@nrc.gov or Mekonen Bayssie, Office of Nuclear Regulatory Research, telephone: 301-415-1699, email: Mekonen.Bayssie@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Please do not include any potentially classified or sensitive information in your email.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing RG in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 1 to RG 5.69 incorporates methods to apply requirements of updated regulations and lessons-learned from regulatory oversight, including

operating experience, inspection findings, enforcement actions, Security Frequently Asked Questions, and other regulatory documents (e.g., generic communications). This RG clarifies DBT adversary characteristics and capabilities identified through interactions with stakeholders and inspection activities since the original publication of the guide.

II. Additional Information

Revision 1 to RG 5.69 contains SGI. Accordingly, this RG is being withheld from public disclosure. It will be made available to those affected licensees and cleared stakeholders who have an established need-to-know for access to the RG. The NRC did not announce the availability of the draft RG for public comment because the guide contains SGI and Official Use Only—Security-Related Information. Nonetheless, the NRC is issuing this notice to inform the public of the issuance of the final RG.

On December 23, 2015, the NRC issued an email (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16007A567) transmitting the draft RG for comment to cleared stakeholders who demonstrated a need-to-know for access to the document. The stakeholder's comment period closed on March 7, 2016. The NRC received several comments from stakeholders. The comments and the associated comment resolution contain SGI and are not available to the public. In addition, per Staff Requirements Memorandum (SRM)—SECY-18-0110, "Proposed Revision to Regulatory Guide 5.69, "Guidance for the Application of the Radiological Sabotage Design-Basis Threat for Nuclear Power Reactors,"" dated November 18, 2021 (Non-Publicly Available), staff completed the Commission's approved edits to the document as appropriate.

For access to RG 5.69, Revision 1, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

This RG provides updated guidance on the methods acceptable to the NRC staff for complying with the NRC's regulations associated with the design-basis threat for nuclear power reactors.

The RG applies to current licensees and future applicants for, and holders of:

- Operating licenses for nuclear power reactors under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR); and combined licenses for nuclear power reactors under 10 CFR part 52;
- operating licenses for nuclear power reactors that are required to protect safeguards information regulated by the Commission by Order EA-03-086, "Order Requiring Compliance with Revised Design Basis Threat for Operating Power Reactors," dated April 29, 2003; and
- operating licenses for nuclear power reactors that are required to protect safeguards information regulated by the Commission by Order EA-06-037, "Order Requiring Compliance with Updated Adversary Characteristic," dated March 20, 2006.

Issuance of this RG does not constitute backfitting as defined in 10 CFR 50.109, "Backfitting," and as described in NRC Management Directive (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests;" constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, "Licenses, certifications, and approvals for nuclear power plants." As explained in the RG, licensees are not required to comply with the positions set forth in this RG, and the NRC staff does not intend to use the guidance in this RG to support NRC staff actions in a manner that would constitute backfitting or forward fitting or affect the issue finality of any approval issued under 10 CFR part 52. If, in the future, the NRC seeks to impose a position in this RG in a manner that constitutes backfitting or forward fitting or affects the issue finality for a 10 CFR part 52 approval, then the NRC will address the backfitting provision in 10 CFR 50.109, the forward fitting provision of MD 8.4, or the applicable issue finality provision in 10 CFR part 52, respectively.

Dated: February 25, 2022.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2022-04453 Filed 3-2-22; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. MC2022–40; Order No. 6107]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is recognizing a recent Postal Service filing requesting the addition of Extended Mail Forwarding as a permanent offering on the market dominant product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 7, 2022. *Reply comments are due:* March 14, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION: On February 14, 2022, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3045.18 to modify the Mail Classification Schedule (MCS) by adding Extended Mail Forwarding as a permanent offering to the market dominant product list and establishing classification language and prices for Extended Mail Forwarding.¹

The Postal Service explains that the Commission authorized the market test in Order No. 5591 on July 20, 2020.² The test was initially introduced in nine postal districts, but on October 1, 2020, the test was expanded nationwide.³ The Postal Service states that the test proved successful and proposes to add Extended Mail Forwarding to its Market Dominant Products: Special Services: Address Management Services, under section 1515.1 of its MCS. Request at 1–2. The Postal Service states that Extended Mail Forwarding provides customers who submit a permanent change-of-address request the option of extending mail forwarding beyond the

¹ United States Postal Service Request to Convert Extended Mail Forwarding to a Permanent Offering, February 14, 2022 (Request).

² Request at 1; Docket No. MT2020–2, Order Authorizing Extended Mail Forwarding Market Test, July 20, 2020 (Order No. 5591).

³ Request at 1; Docket No. MT2020–2, United States Postal Service Notice of Material Change to Market Test, September 18, 2020.

12 months forwarding period. *Id.* at 2. It claims that the test demonstrated simple operational implementation providing customers who move greater control over their mail forwarding expiration dates. The Postal Service also indicates the addition provides a new revenue stream and has reduced Undeliverable as Addressed handling costs. *Id.*

According to the Postal Service, Extended Mail Forwarding meets the requirements of 39 CFR 3045.18(b) by offering the same services as the experimental product with the same distinct costs and market characteristics, and is based on the data collected during the market test. *Id.* at 2–3.

The Postal Service also claims the proposed product complies with 39 CFR 3045.18(c) because the product and price category is the same as the product at the heart of the market test. *Id.* at 3. The price points will be \$19.95 for a 6-month extension, \$29.95 for a 12-month extension, and \$39.95 for an 18-month extension. *Id.* at 3.

The Postal Service states that, as a new offering, Extended Mail Forwarding does not have price cap implications since it lacks volume history and billing determinants that could be used to calculate a price cap effect and that it is not a rate change subject to 39 U.S.C. 3622(d).⁴ It also points out Extended Mail Forwarding is a new optional feature and does not divert volumes from an existing product by which volumes could be inferred. Request at 3–4. In addition, pursuant to the requirement in 39 CFR 3045.18(c)(3), the Postal Service claims that the market will remain stable into the permanent phase. *Id.* at 4. The Postal Service states that the market test generated cumulative total revenue of almost \$42.2 million. *Id.* The Postal Service also claims the product-specific costs associated with the development of the Extended Mail Forwarding market test were \$505,983.29, including program management and IT-related costs, and have been relatively stable from quarter to quarter. *Id.* at 4–5.

Included as Attachment A to the Request is proposed MCS language. Included as Attachment B are data collection reports filed during the market test as required by 39 CFR 3045.18(c)(4). Included as Attachment C is the Governors' resolution authorizing the Request. The Postal Service explains that it would like to implement the product on July 10, 2022, to align

Extended Mail Forwarding with other IT programming changes, and thus requests the Commission issue a final order no later than May 16, 2022. *Id.* at 5.

Pursuant to rule 3040.133, the Commission provides interested persons an opportunity to express views and offer comments on the proposed addition to the MCS. Comments are due no later than March 7, 2022. Reply comments may be filed no later than March 14, 2022. The Postal Service's Request in Docket No. MC2022–40 can be accessed on the Commission's website (<http://www.prc.gov>).⁵

Pursuant to 39 U.S.C. 505, Richard A. Oliver is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

It is ordered:

1. The Commission establishes Docket No. MC2022–40 for consideration of the matters raised by the United States Postal Service Request to Convert Extended Mail Forwarding to a Permanent Offering, filed February 14, 2022.

2. Comments are due no later than March 7, 2022.

3. Reply comments are due no later than March 14, 2022.

4. Pursuant to 39 U.S.C. 505, Richard A. Oliver is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–03711 Filed 3–2–22; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94316; File No. SR–NASDAQ–2021–066]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Valkyrie XBTO Bitcoin Futures Fund Under Nasdaq Rule 5711(g)

On August 23, 2021, The Nasdaq Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to list and trade shares of the Valkyrie XBTO Bitcoin Futures Fund under Nasdaq Rule 5711(g). On August 25, 2021, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on September 9, 2021.³

On September 29, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On December 7, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act⁸ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 92865 (Sept. 2, 2021), 86 FR 50570.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 93172, 86 FR 55071 (Oct. 5, 2021).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 93731, 86 FR 70882 (Dec. 13, 2021).

⁸ 15 U.S.C. 78s(b)(2).

⁴ Request at 3 citing 39 CFR 3045.15; Docket No. MC2012–31, Order Approving Addition of Postal Service to the Mail Classification Schedule Product Lists, September 7, 2012 (Order No. 1460).

⁵ Additional information provided as part of the Postal Service's market test of the product at issue in Docket No. MT2020–2 may also be accessed on the Commission's website.

the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on September 9, 2021.⁹ The 180th day after publication of the proposed rule change is March 8, 2022. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised in any comments submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates May 7, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NASDAQ-2021-066), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Dated: February 25, 2022.

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2022-04423 Filed 3-2-22; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 2, 2022.

ADDRESSES: Send all comments to, Cynthia Pitts, Office of Disaster Assistance, Small Business Administration.

⁹ See *supra* note 3 and accompanying text.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(57).

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Office of Disaster Assistance, cynthia.pitts@sba.gov, (202) 205-7570 or Curtis B. Rich, Management Analyst, 202-205-7030, curtis.rich@sba.gov.

SUPPLEMENTARY INFORMATION: The information will be collected from borrowers to determine the amount of insurance proceeds received, and ultimately, the amount of eligible loan amount.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

PRA Number: 3245-XXXX.

(1) Title: Assignment of Insurance Proceeds.

Description of Respondents: Applicants for Disaster loans.

Form Number: 2505.

Total Estimated Annual Responses: 23,748.

Total Estimated Annual Hour Burden: 11,874.

Curtis Rich,

Management Analyst.

[FR Doc. 2022-04451 Filed 3-2-22; 8:45 am]

BILLING CODE 8026-03-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2021-0984]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Application for Pilot School Certification

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 October 26, 2021. The collection involves filling out the Application for a Pilot School Certification form and submitting this form to the Federal Aviation Administration (FAA). The information to be collected is necessary because Title 14 Code of the Federal Regulations (CFR), part 141, requires an applicant for a pilot school to receive the FAA Administrator's approval for the issuance of a pilot school certificate. We have revised the name of this information collection for consistency with FAA form 8420-8, Application for Pilot School Certification. We have also updated the number of pilot schools.

DATES: Written comments should be submitted by April 4, 2022.

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: Jean Hardy by email at: jean.hardy@faa.gov; phone: (207) 298-7287.

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: 2120-0009.

Title: Application for Pilot School Certification.

Form Numbers: 8420-8.

Type of Review: This is a 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 October 26, 2021 (86 FR 59265). The information on FAA Form 8420-8, Application for Pilot School Certification, is required from applicants who wish certification as a pilot school with the associated ratings, or who wish to renew their pilot school certification. On previous renewals, the title of this information collection and notice was "Pilot Schools—FAR 141". We have revised the name of this information collection as the term "FAR" is no longer used to reference

aviation regulations. Because of this change, and to add clarity, we are using the name of the FAA form 8420–8, Application for Pilot School Certification. Pilot schools are mandated to report information to the FAA and to keep specific records. Pilot schools train private, commercial, flight instructor, and airline transport pilots, along with training for associated ratings in various types of aircraft. The FAA form 8420–8 is necessary to assure continuing compliance with part 141, renewal of pilot school certificates every 24 months, and for any amendments to pilot school certificates.

The FAA is also making a burden adjustment to the number of pilot schools. Currently, this number is 527. We estimate 31 new applications for an original certification annually from applicants for a pilot school certificate. We estimate 263 applications for renewal annually. This figure represents approximately half of the current 527 certificated pilot schools.

Respondents: Respondents include new applications, renewals of the pilot school certification, and amendments to an existing pilot school.

Frequency: Every 24 months certificated pilot schools must renew their pilot school certification.

Estimated Average Burden per Response: We anticipate 31 new applications at a rate of 0.5 hours for a total of 15.5 hours. We also anticipate 263 applications for renewals at a rate of 0.5 hours for a total of 131.5 hours. Additionally, we estimate 20 applications for an amendment to their pilot school certificate at a rate of 0.5 hours for a total burden of 10.0 hours.

Estimated Total Annual Burden: We anticipate a total annual burden of 27,740 hours.

Issued in Washington, DC, on February 28, 2022.

Dwayne C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2022–04479 Filed 3–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0096]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Electronic Logging Device (ELD) Vendor Registration

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Federal Motor Carrier Safety Administration (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. FMCSA requests approval to renew an ICR titled, “Electronic Logging Device (ELD) Vendor Registration.” This ICR is necessary for ELD vendors to register their ELDs with the Agency.

DATES: Comments on this notice must be received on or before April 4, 2022.

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 information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Jose R. Cestero, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: 202–366–5541; Email Address: jose.cestero@dot.gov. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: *Title:* Electronic Logging Device (ELD) Vendor Registration.

OMB Control Number: 2126–0062.

Type of Request: Renewal of a currently approved information collection.

Respondents: ELD vendors.

Estimated Number of Respondents: 75.

Estimated Time per Response: 15 minutes.

Expiration Date: March 31, 2022.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 150 hours [75 respondents × 2 devices per respondent × 4 updates per device × 15 minutes per response].

Background

49 CFR part 395, subpart B establishes minimum performance and design standards for hours-of-service (HOS) ELDs; requirements for the mandatory use of these devices by drivers currently required to prepare HOS records of duty status (RODS); requirements concerning

HOS supporting documents; and measures to address concerns about harassment resulting from the mandatory use of ELDs.

To ensure consistency among ELD vendors and devices, detailed functional specifications were published as part of the December 2015 final rule (Dec. 16, 2015, 80 FR 78292). Each ELD vendor developing an ELD technology must register online at a secure FMCSA website where the ELD provider can securely certify that its ELD is compliant with the functional specifications. Each ELD vendor must certify that each ELD model and version has been sufficiently tested to meet the functional requirements in the rule under the conditions in which the ELD would be used.

ELD vendors must self-certify and register their devices with FMCSA online via Form MCSA–5893, “Electronic Logging Device (ELD) Vendor Registration and Certification.” FMCSA expects 100% of respondents to submit their information electronically. Once completed, FMCSA issues a unique identification number that the ELD vendor will embed in their device(s). FMCSA maintains a list on its website of the current ELD vendors and devices that have been certified (by the vendors) to meet the functional specifications. The information is necessary for fleets and drivers to easily find a compliant ELD for their use in complying with the FMCSA regulation requiring the use of ELDs.

On October 14, 2021, FMCSA published a notice in the **Federal Register** with a 60-day public comment period to announce this request to renew the information collection (86 FR 57249). The Agency received no comments in response to the notice.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its 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.

Issued under the authority delegated in 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator for Research, Technology and Registration.

[FR Doc. 2022–04460 Filed 3–2–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration**

[Docket No. PHMSA–2019–0224; Notice No. 2022–04]

Hazardous Materials: Notice of Public Meetings in 2022 for International Standards on the Transport of Dangerous Goods

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Hazardous Materials Safety, Department of Transportation (DOT).

ACTION: Notice of 2022 public meetings.

SUMMARY: This notice announces that PHMSA's Office of Hazardous Materials Safety will host three public meetings during 2022 in advance of certain international meetings. The first meeting will be held in preparation of the 60th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) scheduled for June 27 to July 6, 2022, in Geneva, Switzerland. The second meeting will be held in preparation of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) Working Group 22 (WG/22) tentatively scheduled for November 21–25, in Montreal, Canada. The third meeting will be held in preparation of the 61st session of the UNSCOE TDG scheduled for November 28 to December 6, 2022, in Geneva, Switzerland. For each of these meetings, PHMSA will solicit public input on current proposals.

ADDRESSES: Each public meeting will take place virtually approximately two weeks preceding the international meeting. If the guidelines concerning the global health emergency change, PHMSA may hold the meeting(s), concurrent with the virtual sessions, at DOT Headquarters, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Specific information for each meeting will be posted when available on the PHMSA website at <https://www.phmsa.dot.gov/international-program/international-program-overview> under "Upcoming Events." This information will include the public meeting date, time, conference call-in number, and details for advanced registration.

FOR FURTHER INFORMATION CONTACT: Steven Webb or Aaron Wiener, PHMSA, U.S. Department of Transportation. Telephone: (202) 366–8553.

SUPPLEMENTARY INFORMATION: The purpose of PHMSA's public meetings

held in advance of certain international meetings is to allow the public to give input on the current proposals being considered by the international standards setting bodies.

The 60th and 61st sessions of the UNSCOE TDG will represent the third and fourth meetings scheduled for the 2021–2022 biennium. The UNSCOE TDG will consider proposals for the 23rd Revised Edition of the *United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations* (Model Regulations), which may be implemented into relevant domestic, regional, and international regulations starting January 1, 2025. Copies of working documents, informal documents, the agenda, and the post-meeting final report may be obtained from the United Nations Transport Division's website at: <http://www.unece.org/trans/danger/danger.html>.

The ICAO WG/22 meeting will represent the first meeting of the 2022–2023 biennium. The ICAO DGP will consider proposals for the 2024–2025 edition of the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284). Copies of working papers, information papers, the agenda, and the post-meeting final report may be obtained from the ICAO DGP website at: <https://www.icao.int/safety/DangerousGoods/Pages/DGPM Meetings.aspx>.

Signed in Washington, DC, on February 25, 2022.

William S. Schoonover,
Associate Administrator, Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2022–04435 Filed 3–2–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY**Bureau of the Fiscal Service****Proposed Collection of Information: ACH Vendor/Miscellaneous Payment Enrollment Form**

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the

Treasury is soliciting comments concerning the ACH Vendor/Miscellaneous Payment Enrollment Form.

DATES: Written comments should be received on or before May 2, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: ACH Vendor/Miscellaneous Payment Enrollment Form.

OMB Number: 1530–0069.

Form Number: SF 3881.

Abstract: The form is used by multiple agencies to collect payment data from vendors doing business with the Federal Government. The Treasury Department, Bureau of the Fiscal Service, will use the information to electronically transmit payment to vendors' financial institutions.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 12,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 25, 2022.

Bruce A. Sharp,
Bureau Clearance Officer.

[FR Doc. 2022–04411 Filed 3–2–22; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY**Bureau of the Fiscal Service****Proposed Collection of Information: Collateral Security Resolution and Collateral Pledge and Security Agreement**

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning Collateral Security Resolution and Collateral Pledge and Security Agreement.

DATES: Written comments should be received on or before May 2, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006-A, P.O. Box 1328, Parkersburg, WV 26106-1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: Collateral Security Resolution and Collateral Pledge and Security Agreement.

OMB Number: 1530-0017.

Form Number: FS 5902 and FS 5903.

Abstract: These forms are used to give authority to financial institutions to become a depository of the Federal Government. They also execute an agreement from the financial institutions they are authorized to pledge collateral to secure public funds with Federal Reserve Banks or their designees.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 15 (2 forms each).

Estimated Time per Respondent: 30 minutes (15 minutes each form).

Estimated Total Annual Burden Hours: 7.5.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 25, 2022.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2022-04410 Filed 3-2-22; 8:45 am]

BILLING CODE 4810-AS-P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Notice of OFAC Sanctions Actions**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of two persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On February 25, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. PUTIN, Vladimir Vladimirovich (Cyrillic: ПУТИН, Владимир Владимирович) (a.k.a. PUTIN, Vladimir (Cyrillic: ПУТИН, Владимир)), Kremlin, Moscow, Russia; Novo-Ogaryevo, Moscow Region, Russia; Bocharov Ruchey, Sochi, Russia; Valdai, Novgorod Region, Russia; DOB 07 Oct 1952; POB Leningrad, Russia; nationality Russia; citizen Russia; Gender Male; President of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

2. LAVROV, Sergei Viktorovich (Cyrillic: ЛАВРОВ, Сергей Викторович) (a.k.a. LAVROV, Sergey), Russia; DOB 21 Mar 1950; POB Moscow, Russia; nationality Russia; Gender Male; Minister of Foreign Affairs of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

Dated: February 25, 2022.

Andrea M. Gacki,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2022-04461 Filed 3-2-22; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons or property that

have been placed on one or more of OFAC's sanctions lists based on OFAC's determination that one or more applicable legal criteria were satisfied.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional

information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

A. Blocking of Property and Interests in Property Pursuant to E.O. 14024

On February 28, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below. U.S. persons are generally prohibited from engaging in transactions with them. These names have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons.

BILLING CODE 4810-AL-P

Individual

1. DMITRIEV, Kirill Aleksandrovich (Cyrillic: ДМИТРИЕВ, Кирилл Александрович) (a.k.a. DMITRIYEV, Kirill), Moscow, Russia; DOB 12 Apr 1975; POB Kyiv, Ukraine; nationality Russia; Gender Male; Tax ID No. 773013083324 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

Entities

1. JOINT STOCK COMPANY MANAGEMENT COMPANY OF THE RUSSIAN DIRECT INVESTMENT FUND (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО УПРАВЛЯЮЩАЯ КОМПАНИЯ РОССИЙСКОГО ФОНДА ПРЯМЫХ ИНВЕСТИЦИЙ) (a.k.a. AKTSIONERNOE OBSHCHESTVO UPRAVLYAYUSHCHAYA KOMPANIYA ROSSISKOGO FONDA PRYAMYKH INVESTITSI; a.k.a. AKTSIONERNOYE OBSHCHESTVO UPRAVLYAYUSHCHAYA KOMPANIYA ROSSIYSKOGO FONDA PRYAMYKH INVESTITSIY; f.k.a. LIMITED LIABILITY COMPANY MANAGEMENT COMPANY OF RDIF; f.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU UPRAVLYAYUSHCHAYA KOMPANIYA RFPI (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ); a.k.a. "АО УК РФПИ" (Cyrillic: "АО УК РФПИ"); a.k.a. "JSC MC RDIF"), Naberezhnaya Presnenskaya, Dom 8 Stroeniye 1, Etaj 7, Moscow 123112, Russia (Cyrillic: Набережная Пресненская, Дом 8, Строение 1, Этаж 7, Москва 123112, Russia); Website www.rdif.ru; alt. Website www.investinrussia.com; Organization Established Date 11 Apr 2017; Organization Type: Trusts, funds and similar financial entities; Target Type Financial Institution; alt. Target Type State-Owned Enterprise; Tax ID No. 7703425673 (Russia); Government Gazette Number 15110384 (Russia); Registration Number 1177746367017 (Russia) [RUSSIA-EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(vii) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

2. LIMITED LIABILITY COMPANY RVC MANAGEMENT COMPANY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ УПРАВЛЯЮЩАЯ КОМПАНИЯ РВК) (a.k.a. OBNHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU UPRAVLYAYUSHCHAYA KOMPANIYA RVK; a.k.a. RUSSIAN VENTURE COMPANY (Cyrillic: РОССИЙСКАЯ ВЕНЧУРНАЯ КОМПАНИЯ); a.k.a. RVC MANAGEMENT COMPANY LLC; a.k.a. "LLC MC RVC"; a.k.a. "LLC UK RVK"; a.k.a. "ООО UK RVK" (Cyrillic: "ООО УК РВК")), D. 8, Str. 1, Etaj 12, Nab. Presnenskaya, Moscow 123112, Russia (Cyrillic: Дом 8, Строеение 1 Этаж 12, Набережная Пресненская, Москва 123112, Russia); Website <https://rvc.ru>; Organization Established Date 30 Dec 2020; Organization Type: Trusts, funds and similar financial entities; Target Type Financial Institution; alt. Target Type State-Owned Enterprise; Tax ID No. 9703024347 (Russia); Government Gazette Number 33185693 (Russia); Registration Number 1207700502547 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY MANAGEMENT COMPANY OF THE RUSSIAN DIRECT INVESTMENT FUND).

Designated pursuant to sections 1(a)(i) and 1(a)(vii) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Management Company of the Russian Direct Investment Fund, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. RUSSIAN DIRECT INVESTMENT FUND (Cyrillic: РОССИЙСКИЙ ФОНД ПРЯМЫХ ИНВЕСТИЦИЙ) (a.k.a. "RDIF" (Cyrillic: "РФПИ")), Presnenskaya nab., D. 8, Structure 1, МФК Capital City, South Tower, 7, 8th Floor, Moscow 123112, Russia (Cyrillic: Пресненская наб., д. 8, стр. 1 МФК Город Столиц, Южная башня, 7, 8 этаж, Москва 123112, Russia); Website www.rdif.ru; alt. Website www.investinrussia.com; Organization Established Date 01 Jun 2011; Target Type Government Entity [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

B. Persons Determined To Be Subject to Directive 4 Under E.O. 14024

On February 28, 2022, OFAC determined that the following entities (a) are political subdivisions, agencies,

or instrumentalities of the Government of the Russian Federation; and (b) shall be subject to the prohibitions of Directive 4 under E.O. 14024, "Prohibitions Related to Transactions Involving the Central Bank of the

Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation." These names have been placed on OFAC's Non-SDN Menu Based Sanctions List.

1. MINISTRY OF FINANCE OF THE RUSSIAN FEDERATION (Cyrillic: МИНИСТЕРСТВО ФИНАНСОВ РОССИЙСКОЙ ФЕДЕРАЦИИ), 9 Ilyinka Street, Moscow 109097, Russia (Cyrillic: ул. Ильинка, 9, Москва 109097, Russia); Target Type Government Entity; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives>; Executive Order 14024 Directive Information Subject to Directive 1a - As of the effective date, participation in the secondary market for ruble or non-ruble denominated bonds issued on or after the effective date by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation is prohibited.; alt. Executive Order 14024 Directive Information Subject to Directive 4 - any transaction involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation, including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities is prohibited.; Listing Date (EO 14024 Directive 1a): 22 Feb 2022; Effective Date (EO 14024 Directive 1a): 01 Mar 2022 [RUSSIA-EO14024].
2. NATIONAL WEALTH FUND OF THE RUSSIAN FEDERATION (Cyrillic: ФОНД НАЦИОНАЛЬНОГО БЛАГОСОСТОЯНИЯ), 9 Ilyinka Street, Moscow 109097, Russia (Cyrillic: ул. Ильинка, 9, Москва 109097, Russia); Target Type Government Entity; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives>; Executive Order 14024 Directive Information Subject to Directive 1a - As of the effective date, participation in the secondary market for ruble or non-ruble denominated bonds issued on or after the effective date by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation is prohibited.; alt. Executive Order 14024 Directive Information Subject to Directive 4 - any transaction involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation, including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities is prohibited.; Listing Date (EO 14024 Directive 1a): 22 Feb 2022; Effective Date (EO 14024 Directive 1a): 01 Mar 2022 [RUSSIA-EO14024].

3. CENTRAL BANK OF THE RUSSIAN FEDERATION (Cyrillic: ЦЕНТРАЛЬНЫЙ БАНК РОССИЙСКОЙ ФЕДЕРАЦИИ) (a.k.a. BANK OF RUSSIA; a.k.a. BANK OF RUSSIA, CENTRAL BANK; a.k.a. BANK ROSSI, FEDERAL STATE BUDGETARY INSTITUTION; a.k.a. CENTRAL BANK OF RUSSIA; a.k.a. TSENTRALNY BANK ROSSISKOI FEDERATSII), Neglinnaya St 12, Moscow 107016, Russia; Moscow, Russia; SWIFT/BIC CBRFRUMM; Website www.cbr.ru; Organization Established Date 13 Jul 1990; Organization Type: Central banking; Target Type Government Entity; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives>; Executive Order 14024 Directive Information Subject to Directive 1a - As of the effective date, participation in the secondary market for ruble or non-ruble denominated bonds issued on or after the effective date by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation is prohibited.; alt. Executive Order 14024 Directive Information Subject to Directive 4 - any transaction involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation, including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities is prohibited.; Listing Date (EO 14024 Directive 1a): 22 Feb 2022; Effective Date (EO 14024 Directive 1a): 01 Mar 2022; Tax ID No. 7702235133 (Russia); Government Gazette Number 00032253 (Russia); Registration Number 1037700013020 (Russia) [RUSSIA-EO14024].

Dated: February 28, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.

[FR Doc. 2022-04462 Filed 3-2-22; 8:45 am]

BILLING CODE 4810-AL-C

DEPARTMENT OF THE TREASURY

Agreement for a Social Impact Partnership Project

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: In accordance with the Social Impact Partnerships to Pay for Results Act (“SIPRA”), the U.S. Department of the Treasury (“Treasury”) and Oklahoma Office of Management and Enterprise Services (“Oklahoma”) have entered into an agreement for a social impact partnership project (the “Project Grant Agreement”).

SUPPLEMENTARY INFORMATION: The Project Grant Agreement contains the following features:

(1) *The outcome goals of the social impact partnership project:* The Women in Recovery (“WIR”) Pay for Success Project seeks to demonstrate stable employment and improved child welfare outcomes (reduced foster care involvement and contact with child protection services) for the target population.

(2) *A description of each intervention in the project:* WIR is an intensive alternative to incarceration for women facing long-term prison sentences for non-violent offenses. WIR is specifically designed to address the complex needs and risks of justice-involved women. The program combines best practices from the mental health and criminal justice fields as well as the integration of gender-specific best practices and treatment models to reduce female incarceration. Experienced and trained professional staff provide an array of intensive evidence-based treatment and best practice comprehensive support and wraparound services within a three-phase, daily program structure. In

addition to gender-specific treatment models, specialized program components address issues impacting women, including domestic violence, trauma, self-sufficiency, family reunification, parenting and children’s issues.

(3) *The target population that will be served by the project:* WIR targets justice-involved females 18 years old or older with substance use disorders, who are prison-bound and ineligible for other Tulsa County diversion programs.

(4) *The expected social benefits to participants who receive the intervention and others who may be impacted:* WIR helps women conquer drug addiction, recover from trauma and acquire essential economic, emotional and social tools to build successful and productive lives, thus improving public safety and reducing recidivism while generating federal, state, and local financial value. With a focus on improving the lives of at-risk women and their children, WIR also seeks to break the cycle of intergenerational

incarceration by strengthening and reuniting WIR mothers and their children.

(5) The detailed roles, responsibilities, and purposes of each Federal, State, or local government entity, intermediary, service provider, independent evaluator, investor, or other stakeholder:

Recipient. Oklahoma is the recipient, fiscal agent, and lead data sharing partner in the project.

Service Provider. Family & Children’s Services (“F&CS”) will deliver all the services for WIR. F&CS has a mission to promote, support and strengthen the well-being and behavioral health of adults, children and families. F&CS works closely with the criminal justice system and various community partners to ensure program participants receive supervision, substance abuse and mental health treatment, comprehensive case management, education, workforce readiness training and family reunification services. F&CS will collect, store, analyze, and share program-related data as needed for the independent evaluation, and will be the recipient of investor up-front capital funding for the project. F&CS will also be the recipient of all federal outcome payments earned through verification by

the independent evaluation of value to the federal government.

Investor. The George Kaiser Family Foundation (“GKFF”) is the primary upfront private investor for WIR. GKFF, in conjunction with other public/private sources, intends to provide F&CS with the annual capital to fund the delivery of WIR services.

Evaluator. WestEd, a nonpartisan, nonprofit research, development, and service agency, will serve as the external independent evaluator for the project. WestEd will design and implement the evaluation, measure the impact and value of the WIR program across all outcome measures, report the results to all entities of the project, and verify the value to the federal government for the purposes of federal outcome payments.

(6) The payment terms, the methodology used to calculate outcome payments, the payment schedule, and performance thresholds: The project has two outcome domains, employment and child welfare, and will deliver services to two different cohorts. If the project is successful, four payments will be made in total, two for each cohort. For each cohort a payment will be made for outcomes achieved at 18 months post-enrollment and a second payment will

be made for outcomes achieved at 30 months post-enrollment. The 30-month outcomes will only look at impact that occurred since the 18-month time point, as federal outcome payments will have already been realized for impact that occurred during the first 18 months. Each cohort will be eligible for one payment for each outcome domain: Employment and child welfare. Each outcome valuation will be conducted independently, and the realization of outcome payments related to one outcome domain will not be contingent on the results from any other outcome domain.

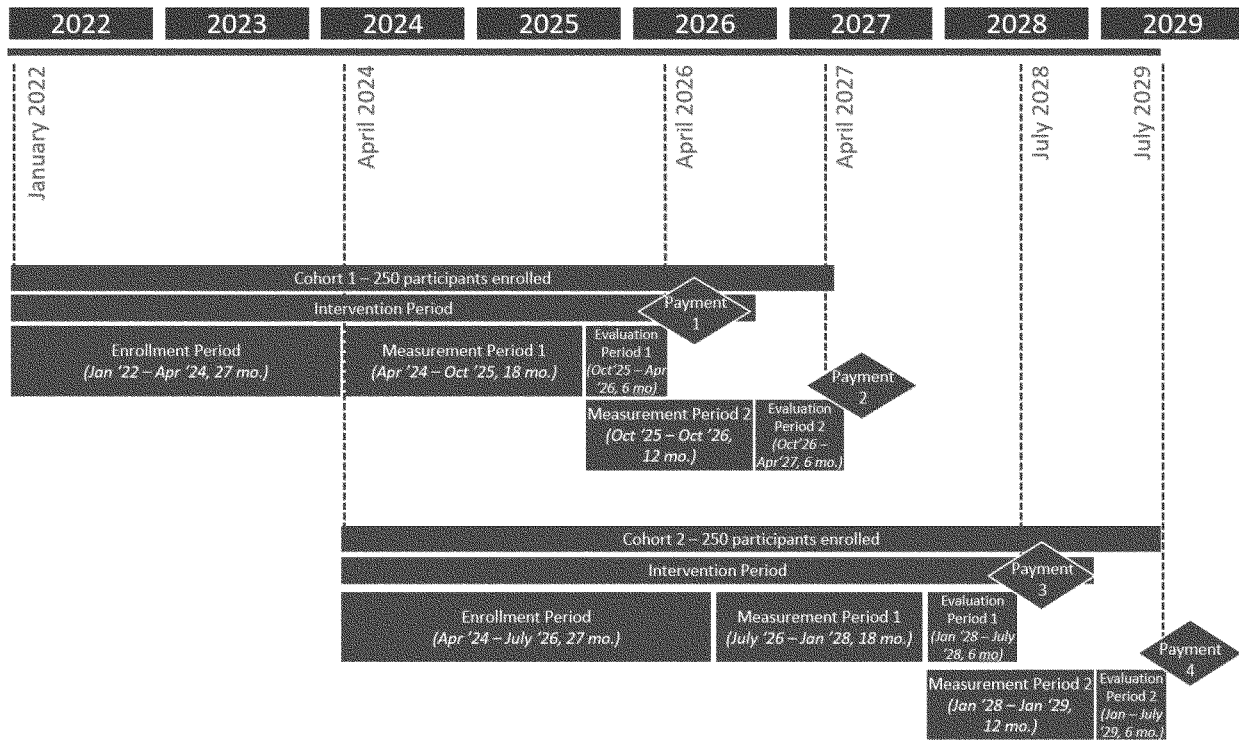
For child welfare, the independent evaluation will compare the results of the treatment group to the results of the comparison group and only validate a request for outcome payments for the level of success and federal value achieved within the identified range.

To calculate the outcome payment for federal value for the employment outcome, the independent evaluator will take the estimate of the increase in wages from the treatment and calculate the resulting federal value.

(7) The project budget:

	Sources	Uses
8.1 Public & private grant funding	\$6,997,594	.....
8.2 State outcome payments	6,419,828	.....
8.3 Investor (GKFF)	12,326,544	.....
8.4 Service provider cost (F&CS WIR) .....	.....	\$25,743,966
8.5 Federal outcome payments	3,367,085	.....
8.6 WIR Sustainability .....	.....	3,367,085
8.7 Federal evaluation funding	505,063	.....
8.8 Evaluator Budget .....	.....	505,063
8.9 Intermediary	0	0
Total	29,616,114	29,616,114

(8) The project timeline:



(9) *The project eligibility criteria:* All participants are women with substance abuse issues who are at imminent risk for incarceration and ineligible for other drug or mental health court and jail diversion programs. All eligible women receive a standardized, gender-specific risk assessment to determine their risk, needs and treatment readiness. WIR then advocates and collaborates with the local prosecutor, court services and judges to make a final decision on admission to the WIR program. All participants must be able, emotionally and mentally, to receive services in an outpatient environment, voluntarily consent to services and work collaboratively with the treatment team under a comprehensive treatment plan.

(10) *The evaluation design:* WestEd will lead a quasi-experiment matched comparison study using logistic regression and ordinary least squares regression. The proposed project, evaluation methods, and anticipated outcomes are designed in a way to produce rigorous evidence that participant outcomes are not due to random chance or some other observable force. The reliance on state and local administrative data sources reduced (essentially removes) the chance that outcome measures can be manipulated by service providers, intermediaries, or investors. To further mitigate this chance, WestEd will include a number of steps to ensure the independence and integrity of the evaluation process.

(11) *The metrics that will be used in the evaluation to determine whether the outcomes have been achieved as a result of each intervention and how these metrics will be measured:* The project will be evaluated using a quasi-experimental design study. The treatment group shall consist of individuals who have been enrolled in the WIR program. The control group shall be a matched comparison group, consisting of female prison receptions and releases outside of Tulsa County who did not receive WIR or other comparable services. The results of the treatment group will be compared to the results of the comparison group across all outcome measures.

(12) *The estimate of the savings to the Federal, State, and local government, on a program-by-program basis and in the aggregate, if the agreement is entered into and implemented and the outcomes are achieved as a result of each intervention:*

Federal Savings: \$3,367,085.

Oklahoma expects state and local savings to be realized by reduced public sector costs related to incarceration, parole supervision, homelessness, and child welfare. Oklahoma also expects an increase in tax revenue and contributions to the local economy.

Catherine Wolfram,

Deputy Assistant Secretary for Climate and Energy Economics, Office of Economic Policy.

[FR Doc. 2022-04412 Filed 3-2-22; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF VETERANS AFFAIRS

Veterans and Community Oversight and Engagement Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, that the Veterans and Community Oversight and Engagement Board will meet virtually on March 31, 2022. The meeting will begin and end as follows:

Date	Time
March 31, 2022	3:00 p.m. to 7:00 p.m. EST.

The meetings are open to the public and will be recorded. Members of the public can attend the meeting by registering at the link below: <https://veteransaffairs.webex.com/veteransaffairs/onstage/g.php?MTID=e0134f9acbe7e5ede80dd32e4d2ac43c1>.

The Board was established by the West Los Angeles Leasing Act of 2016 on September 29, 2016. The purpose of the Board is to provide advice and make recommendations to the Secretary of Veterans Affairs on: Identifying the goals of the community and Veteran partnership; improving services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and on the

implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any successor master plans.

On March 31, the agenda will include opening remarks from the Committee Chair, Executive Sponsor, and other VA officials. There will be a comprehensive briefing from the Veterans Administration Greater Los Angeles Healthcare System (VAGLAHS) on Master Plan 2022 timeline and activities, Current FY22 project budget status, and an update on the Lease Revenue status. A comprehensive briefing on “By Name List” will be provided by Community Solutions. The Board’s Services and Outcome Subcommittee Master Plan will present a recommendation that introduces a dashboard to track Homeless Veterans, HUD VASH voucher utilization, and vacant master-leased properties.

A public comment session will occur from 4:25 p.m. to 5:15 p.m. EST. Individuals wishing to make public comments are required to register during the WEBEX registration process. In the interest of time management, speakers will be held to a 5-minute time limit and selected in the order of event registration. If time expires and your name was not selected, or you did not register to provide public comment and would like to do so, you are asked to submit public comments via email at VEOFACA@va.gov for inclusion in the official meeting record.

To attend the meeting, use the registration instructions—Registration Instructions: Select the “Register” hyperlink in event status or the “Register” button located bottom center of the page. Attendees will then be asked to identify themselves by first name, last name, email address, affiliation (if any) and interest in making a public comment. Please select “Submit” to finish registration. You will receive a confirmation email from WEBEX shortly after registration. The confirmation email will include a calendar event invitation and instructions to join the meeting via web browser or telephone. Attempts to join the meeting will not work until the host opens the meeting approximately ten minutes prior to start time.

Any member of the public seeking additional information should contact Mr. Eugene W. Skinner Jr. at (202) 631-7645 or Eugene.Skinner@va.gov.

Dated: February 28, 2022.

Jelessa M. Burney,
Federal Advisory Committee Management Officer.

[FR Doc. 2022-04503 Filed 3-2-22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2., that a virtual meeting of the Advisory Committee on Disability Compensation (Committee) will begin and end as follows:

Date	Time
Tuesday, March 15, 2022	9:00 a.m.–1:00 p.m. (Eastern Standard Time).

The virtual meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities.

The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The agenda will include review and discussion of prior-year, Biennial Reports and beginning discussion on the 2022 Biennial Report.

No time will be allocated during this virtual meeting for receiving oral presentations from the public. The public may submit one-page summaries of their written statements for the Committee’s review. Public comments may be received no later than March 7, 2022, for inclusion in the official meeting record. Please send these comments to Sian Roussel of the Veterans Benefits Administration, Compensation Service, at Sian.Roussel@va.gov.

Members of the public who wish to obtain a copy of the agenda should contact Sian Roussel at Sian.Roussel@va.gov and provide their name, professional affiliation, email address and phone number. The call-in number (United States, Chicago) for those who would like to attend the meeting (audio

only) is +1 872-701-0185; phone conference ID: 220 264 469#.

Dated: February 28, 2022.

Jelessa M. Burney,
Federal Advisory Committee Management Officer.

[FR Doc. 2022-04504 Filed 3-2-22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0894]

Agency Information Collection Activity: Program of Comprehensive Assistance for Family Caregivers (PACFC) Decision Appeal Forms

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 2, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Janel Keyes, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to Janel.Keyes@va.gov. Please refer to “OMB Control No. 2900-0894” in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900-0894” in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Program of Comprehensive Assistance for Family Caregivers (PCAFC) Decision Appeal Forms, VA Forms 10–306 and 10–307.

OMB Control Number: 2900–0894.

Type of Review: Extension of a currently approved collection.

Abstract: The Caregivers and Veterans Omnibus Health Services Act of 2010 (Pub. L. 111–163) established 38 U.S.C. 1720G, which directed the Department of Veterans Affairs (VA) to establish a Program of Comprehensive Assistance for Family Caregivers (PCAFC) and a Program of General Caregiver Support Services (PGCSS). Both programs are managed by VA's Caregiver Support Program (CSP) Office. On June 06, 2018, the President signed into law the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 or the VA MISSION Act 2018 (Pub. L. 115–182). The VA MISSION Act of 2018 fundamentally transformed elements of the Department of Veterans

Affairs' (VA) healthcare system to include expanding the PCAFC to Family Caregivers of eligible Veterans of all eras in a phased approach, established new benefits for Primary Family Caregivers of eligible Veterans, and made other changes affecting program eligibility and VA's evaluation of PCAFC applications. The statutory authority for PCAFC and PGCSS is codified at 38 U.S.C. 1720G. VA's regulations implementing PCAFC and PGCSS are in 38 CFR part 71.

Since program inception, Veterans and caregivers who disagree with a PCAFC decision were afforded the right to appeal through the Veterans Health Administration (VHA) Clinical Appeals Process. A recent Court ruling has changed the appeal and review options now available to individuals who have received a PCAFC decision and disagree with that decision. On April 19, 2021, in the case of *Jeremy Beaudette & Maya Beaudette v. Denis McDonough, Secretary of Veterans Affairs*, the U.S. Court of Appeals for Veterans Claims ruled in favor of petitioners seeking review by the Board of Veterans' Appeals (BVA or Board) of decisions under the PCAFC. The Court also certified, as a class, claimants who received an adverse benefits decision under PCAFC, exhausted the administrative review process within VHA (the VHA Clinical Appeals Process), and have not been afforded the right to appeal to the Board. As a result of the Court's ruling, BVA review is now available to individuals who have received a decision under the PCAFC since the program began in May 2011. Consequently, VA has expanded options available to Veterans and caregivers who seek review of or to appeal a PCAFC decision.

The options now include a separate appeals process (legacy) that must be used to appeal to the Board regarding PCAFC decisions issued before February

19, 2019. This legacy process is implemented through use of VA Forms 10–306 and 10–307.

VA Form 10–306, Request for Information—Because individuals now have additional options for appealing and seeking review of previous PCAFC decisions, dating back to May 2011, this form allows Veterans and caregivers to request information about past PCAFC decisions to determine whether they wish to pursue an appeal to the Board or request review.

VA Form 10–307, Notice of Disagreement—This form was developed because VA Form 21–0958, which previously was used to initiate an appeal to the Board of benefits decisions dated before February 19, 2019, is no longer an approved information collection. VA Form 10–307, Notice of Disagreement, is now used for legacy appeals of PCAFC decisions and is specific to individuals who wish to appeal a PCAFC decision that was issued prior to February 19, 2019.

Affected Public: Individuals and households.

Estimated Annual Burden: 88,270 total hours.

a. 10–306—45,500 hours.

b. 10–307—42,770 hours.

Estimated Average Burden per Respondent: 45 total minutes.

a. 10–306—15 minutes.

b. 10–307—30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 267,540 total.

a. 10–306—182,000.

b. 10–307—85,540.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–04510 Filed 3–2–22; 8:45 am]

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Part II

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 734, 738, 740, et al.

Implementation of Sanctions Against Russia Under the Export
Administration Regulations (EAR); Final Rule

DEPARTMENT OF COMMERCE**Bureau of Industry and Security**

15 CFR Parts 734, 738, 740, 742, 744, 746, and 772

[Docket No. 220215–0048]

RIN 0694–AI71

Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In response to the Russian Federation’s (Russia’s) further invasion of Ukraine, with this final rule, the Department of Commerce is adding new Russia license requirements and licensing policies to the Export Administration Regulations (EAR) to protect U.S. national security and foreign policy interests. These new Russia measures: Impose new Commerce Control List (CCL)-based license requirements for Russia; add two new foreign “direct product” rules (FDP rules) specific to Russia and Russian ‘military end users;’ specify a license review policy of denial applicable to all of the license requirements being added in this rule, with certain limited exceptions; significantly restrict the use of EAR license exceptions; expand the existing Russia ‘military end use’ and ‘military end user’ control scope to all items “subject to the EAR” other than food and medicine designated EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs); transfer forty-five Russian entities from the Military End-User (MEU) List to the Entity List with an expanded license requirement of all items subject to the EAR (including foreign-produced items subject to the Russia-MEU FDP rules); and add two new Russia entities and revise two Russia entities to the Entity List. Lastly, this rule imposes comprehensive export, reexport and transfer (in-country) restrictions for the so-called Donetsk People’s Republic (DNR) and Luhansk People’s Republics (LNR) regions of Ukraine (“Covered Regions of Ukraine”) and makes conforming revisions to export, reexport transfer (in-country) restrictions for Crimea Region of Ukraine provisions.

DATES: This rule is effective February 24, 2022.

FOR FURTHER INFORMATION CONTACT: For questions on the Entity List and MEU List, contact the Chair, End-User Review Committee, Office of the Assistant

Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: ERC@bis.doc.gov.

For other questions on this final rule, contact Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–0092, Fax: (202) 482–3355, Email: rp2@bis.doc.gov. For emails, include “Russia” in the subject line.

SUPPLEMENTARY INFORMATION:

I. Background

In response to the Russian Federation’s (Russia’s) further invasion of Ukraine, the Bureau of Industry and Security (BIS) imposes extensive sanctions on Russia by amending the Export Administration Regulations (15 CFR parts 730–774) (EAR). Russia’s invasion of Ukraine flagrantly violates international law, is contrary to U.S. national security and foreign policy interests, and undermines global order, peace, and security, and therefore necessitates these stringent and expansive sanctions. The Commerce Department’s sanctions are one aspect of the broad U.S. Government response to Russia’s unprovoked aggression and are being imposed in coordination with allies and partners.

In response to Russia’s 2014 invasion of Ukraine and occupation of the Crimean region, the U.S. Government, in coordination with its partners and allies, imposed restrictions on Russia, including asset-blocking measures, licensing requirements applicable to exports, reexports, and transfers (in-country) of items subject to the EAR destined for certain Russian entities, and special controls on items subject to the EAR intended for use in specified Russian industry sectors. Leading up to Russia’s further invasion of Ukraine, the U.S. Government announced that should Russia encroach further on Ukraine’s territory, it would impose additional, comprehensive sanctions with significant consequences.

The export control measures implemented in this final rule protect U.S. national security and foreign policy interests by restricting Russia’s access to items that it needs to project power and fulfill its strategic ambitions. These items include sophisticated technologies designed and produced in the United States, as well as certain foreign-produced items that contain or are based on U.S.-origin technology subject to the EAR or other technology that is subject to the EAR that are essential inputs to Russia’s key

technology and other sectors. BIS is primarily targeting the Russian defense, aerospace, and maritime sectors with these new export controls. These export controls include controls on the export from abroad of certain foreign-produced items that are subject to the EAR. Given the global dominance of U.S.-origin software, technology, and equipment (including tooling), these new controls, implemented in parallel with similarly stringent measures by partner and allied countries, will cover a broad scope of items that Russia seeks to advance its strategic ambitions and consequently impair the country’s key industrial sectors.

II. Overview of New Controls

BIS is implementing a new license requirement for Russia on items subject to the EAR and classified under any Export Control Classification Number (ECCN) in Categories 3 through 9 of the Commerce Control List, Supp. No. 1 to part 774 of the EAR (CCL). The new license requirement is added under new § 746.8(a)(1) (Russia sanctions) in part 746 of the EAR (Embargoes and Other Special Controls). License exceptions described in § 746.8(c)(1)–(7) may be used to overcome the license requirement. When a license application is required, applications for such items will be subject to a policy of denial. However, to minimize unintended consequences, a case-by-case review policy applies to applications to export, reexport, or transfer (in-country) items that ensure safety of flight, maritime safety, meet humanitarian needs, enable government space cooperation, and allow transactions for items destined to specified Western subsidiaries and joint ventures, support civil telecommunications infrastructure in certain countries, and government-to-government activities. The case-by-case review policy will be used to determine whether a transaction that meets the criteria above would benefit the Russian government or defense sector. Additionally, BIS is establishing two new foreign “direct product” rules (FDP rules) in § 734.9 of the EAR. The first relates to the entire country of Russia, as described in new § 734.9(f) (the “Russia FDP rule”). Foreign-produced items subject to the EAR under the Russia FDP rule will be subject to the license requirement described in new § 746.8(a)(2) but will be eligible for certain license exceptions described in § 746.8(c)(1)–(7). When a license application is required, such applications will be subject to a general policy of denial but will be subject to case-by-case review for certain

circumstances described further in § 746.8(b).

The second new FDP rule targets Russian ‘military end users,’ as described in new § 734.9(g) (the “Russia-MEU FDP rule”). Foreign-produced items subject to the EAR under the Russia-MEU FDP rule will be subject to the license requirement described in new § 746.8(a)(3). No license exceptions are available to overcome this license requirement, except as specified in the Entity List entry for a Footnote 3 entity on the Entity List in supplement no. 4 to part 744 of the EAR, and such items will be subject to a policy of denial for all license applications, as described in § 746.8(b).

BIS has determined that certain countries are committed to implementing substantially similar export controls as part of their domestic sanctions against Russia. These countries are identified in Supplement No. 3 to part 746 (Russia Exclusions List). They are excluded from the requirements of the Russia and Russia-MEU FDP rules and the *de minimis* provisions under Supplement No. 2 to part 734 with respect to ECCNs that either specify only Anti-terrorism (AT) in the reason for controls paragraph of the ECCN or are classified under ECCN 9A991. This exclusion may be full or partial, as noted in the Scope column of the Russia Exclusions List and may only apply when the criteria specified in § 746.8(a)(4) or (5) are met. In addition, the Russia Exclusions List includes certain countries that have committed to implementing substantially similar controls under their domestic laws but have not yet implemented them.

BIS also is expanding the scope of the existing ‘military end use’ and ‘military end user’ control under § 744.21 of the EAR for Russia to apply to all items “subject to the EAR” except food and medicine designated EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs). At the same time, this rule removes forty-five Russian entities from the Military End-User (MEU) List in Supplement No. 7 to part 744 and adds them to the Entity List with an expanded license requirement for the export, reexport, and transfer (in-country) of all items “subject to the EAR,” including those items subject to the Russia-MEU FDP rule for ‘military end users’ in Russia. Finally, BIS adds two new Russian entities to the Entity List under this final rule and revises two existing entries for Russian entities on the Entity List.

III. Amendments to the Export Administration Regulations (EAR)

A. Implementation of New Sanctions Against Russia

Addition of Expansive License Requirements, Restrictive License Review Policies, and Restrictions on License Exception Eligibility for Russia

This final rule adds § 746.8 to impose new sanctions against Russia in part 746 of the EAR (Embargoes and Other Special Controls). Under paragraph (a) (License Requirements) of this new section, this final rule imposes three distinct types of license requirements. The first requirement, set forth in paragraph (a)(1) is specific to the export, reexport and transfer (in-country) of items in categories 3, 4, 5, 6, 7, 8 or 9 of the CCL. The second and third requirements, set forth in paragraphs (a)(2) and (3) are specific to reexport, export from abroad, and transfer (in-country) of foreign-produced “direct products” subject to the EAR under the Russia or Russia-MEU FDP rules.

1. Section 746.8(a)(1) License Requirement

New § 746.8(a)(1) (Items classified in an ECCN in CCL Categories 3 through 9) is supplemental to the license requirements found elsewhere in the EAR. Under this paragraph, a license is required for the export, reexport, or transfer (in-country) to or within Russia of any item subject to the EAR and specified in an ECCN in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL, excluding deemed exports and deemed reexports. In implementing these controls, BIS imposes broad transfer (in-country) requirements on an entire country, reflecting the significance of the U.S. national security and foreign policy concerns, resulting from the Russian further invasion of Ukraine. These license requirements are intended to further restrict items to the Russian military and defense sector. Additionally, paragraph (a)(1) extends EAR license requirements to many items that did not previously require a license to Russia on the basis of their CCL classification alone, such as the parts and components used in civil aircraft controlled under ECCN 9A991.d. Although these items generally are controlled at a lower level under the EAR, they are still necessary for the functioning of aircraft, vessels and electronic items. As such, restrictions on these items can significantly limit Russia’s ability to obtain items it is not able to produce. In addition, with these new license requirements, additional items will be treated as controlled U.S.-

origin content for purposes of *de minimis* calculations under supplement no. 2 to part 734 of the EAR, except as described in § 746.8(a)(5). BIS estimates that these new controls will result in an additional 350 license applications being submitted to BIS annually.

2. Section 746.8(a)(2) License Requirement for the Russia FDP Rule

New paragraph (a)(2) (Foreign-produced “direct product” items subject to the EAR under Russia FDP rule) requirements are imposed in conjunction with the simultaneous creation of a new foreign “direct product” rule specific to Russia (Russia FDP rule) in § 734.9(f) of the EAR. The Russia FDP rule establishes a license requirement for foreign-produced items that meet certain product scope and destination scope requirements in § 734.9(f) of the EAR. Specifically, the Russia FDP rule makes the “direct product” of a wide range of CCL software and technology, or items produced by a complete plant or ‘major component’ of a plant that itself is the “direct product” of such U.S.-origin technology or software, when it is known that the foreign-produced item is destined to Russia or will be incorporated into or used in the “production” or “development” of any “part,” “component,” or “equipment” produced in or destined to Russia. Notably, the product scope of the Russia FDP rule does not include items designated EAR99 that are produced by “technology” or “software” as described in § 734.9(f)(1)(i) or by a complete plant or ‘major component’ of a plant as described in § 734.9(f)(1)(ii). The Russia FDP rule is described in greater detail below.

Under paragraph (a)(2), a license is required for the reexport, export from abroad, or transfer (in-country) of any foreign-produced items subject to the EAR under the Russia FDP Rule described in § 734.9(f) of the EAR to any destination. The phrase ‘any destination’ is used to address situations involving multi-step manufacturing processes that occur in more than one country and in which the parties involved have “knowledge” that the foreign-produced item being produced will ultimately be reexported or exported from abroad to Russia. The license requirements under paragraph (a)(2) will apply to the reexports or exports from abroad from manufacturing country 1 to manufacturing country 2 (each contributing to the production chain), when there is “knowledge” that the reexport or export from abroad of the item is ultimately destined to Russia or incorporated into or used in the

production or development of any part component or equipment (not designated EAR99) produced in or ultimately destined to Russia.

BIS estimates new license requirements under § 746.8(a)(2) will result in an additional 2,000 license applications being submitted to BIS annually.

3. Section 746.8(a)(3) License Requirement for the Russia-MEU FDP Rule

New paragraph (a)(3) (Foreign-produced “direct product” items subject to the EAR under Russia-Military End User FDP Rule) requirements are imposed in conjunction with the simultaneous creation by this rule of a new foreign “direct product” rule specific to Russia (Russia-Military End User FDP Rule) in § 734.9(g) of the EAR. The Russia-Military End User FDP rule establishes a license requirement for foreign-produced items that meet certain product scope and destination scope requirements in § 734.9(g) of the EAR. Specifically, this Russia-Military End User FDP rule makes the “direct product” of a wide range of CCL software and technology (any software or technology in an ECCN in any category of the CCL subject to the EAR, or items produced by a plant or major component of a plant that itself is the “direct product” of such U.S.-origin technology or software) when it is known that the foreign-produced item will be incorporated into, or will be used in the “production” or “development” of any “part,” “component,” or “equipment” produced, purchased, or ordered by any entity with a footnote 3 designation in the license requirement column of the Entity List. Notably, the product scope of the Russia-Military End User FDP rule includes items designated EAR99 that are a “direct product” of “technology” or “software” described in § 734.9(g)(1)(i) or produced by a complete plant or ‘major component’ of a plant as described in § 734.9(g)(1)(ii). The Russia-MEU FDP rule is described in greater detail below.

Section 746.8(a)(3) specifies that except as described in paragraph (a)(4) of this section, a license is required to reexport, export from abroad, or transfer (in-country), to any destination, any foreign-produced item subject to the EAR under § 734.9(g) of the EAR other than food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs). Because the Russia-Military End User FDP rule includes “software” and “technology” in ECCNs

in Categories 0, 1 and 2 (in addition to the other 7 categories of the CCL), the likelihood that EAR99 food and medicine foreign direct products could be subject to the EAR increases. To the extent that the direct product of ECCN 0, 1, and 2 may encompass EAR99 food or medicine, this rule exempts those items from the license requirement. For the same reasons noted above in connection with paragraph (a)(2), this final rule also uses the phrase ‘any destination.’

4. Countries Excluded From Certain Russia License Requirements Under Section 746.8

This final rule also adds a new paragraph § 746.8(a)(4) (Exclusion from license requirements under paragraphs (a)(2) and (3)) to identify countries that BIS has determined are committed to implementing substantially similar export controls as part of their domestic sanctions against Russia. These countries warrant full or partial exclusions, as appropriate, from the requirements set forth under paragraphs (a)(2) and (3) as identified in supplement No. 3 to part 746 (Russia Exclusions List). Similarly, this final rule adds new paragraph (a)(5) (Exclusion from scope of U.S.-origin controlled content under paragraph (a)(1)) to carve out certain content from the scope of U.S.-origin controlled content for *de minimis* purposes under supplement No. 2 to part 734 of the EAR when making a *de minimis* calculation for Russia. New paragraph (a)(5) specifies that the license requirements in paragraph (a)(1) of this section are not used to determine controlled U.S.-origin content in a foreign-made item, provided that: The U.S.-origin content is described in ECCNs that either specify only Anti-terrorism (AT) in the reason for controls paragraph of the ECCN or is classified under ECCN 9A991 and is included in the Scope column of the Russia Exclusions List; and the foreign-made item will be reexported or exported to Russia from a country in the Russia Exclusions List.

As a conforming change, this final rule also revises supplement No. 2 to part 734—Guidelines for *De Minimis* Rules, by revising the third sentence of paragraph (a)(1), which specifies using the license requirements in part 746 for identifying U.S.-origin controlled content for *de minimis* content. This final rule adds a parenthetical phrase after part 746 to add the phrase “excluding U.S.-origin content that meets the criteria in § 746.8(a)(5).”

Excluded countries for purposes of § 746.8 are identified in new supplement No. 3 to part 746—

Countries Excluded from Certain Russia License Requirements, also known as the Russia Exclusions List. The new supplement includes three columns, identifying: (1) The countries for purposes of the exclusion under § 746.8(a)(4) and (5); (2) the scope of the exclusion; and (3) the **Federal Register** document announcing the addition of such countries to the supplement. This final rule adds the twenty-seven countries of the European Union, Australia, Canada, Japan, New Zealand, and the United Kingdom, as the first countries in supplement No. 3 to part 746. The introductory text of the Russia Exclusions List specifies that exclusions may be full or partial. If a partial exclusion applies, the applicable ECCNs will be described in the Scope column of list.

5. Licensing Policy for Applications Required Under Section 746.8

Under new § 746.8(b) (Licensing policy), applications for the export, reexport or transfer (in-country) of items that require a license under new paragraph (a)(1) and (2) will be reviewed, with certain limited exceptions, under a policy of denial. License applications for certain categories of exports, reexports, and transfers (in-country) will be reviewed on a case-by-case basis to determine whether the transaction would benefit the Russian government or defense sector. These categories are as follows: Applications related to safety of flight, maritime safety, to meet humanitarian needs, in support of government space cooperation, applications for companies headquartered in Country Groups A:5 and A:6 to support civil telecommunications infrastructure, or involving government-to-government activities. In addition, applications for items destined to certain companies operating in Russia will be reviewed on a case-by-case basis if the companies are: (1) Wholly-owned U.S. subsidiaries; (2) foreign subsidiaries of U.S. companies that are joint ventures with other U.S. companies, (3) joint ventures of U.S. companies with companies headquartered in Country Group A:5 and A:6 in supplement no. 1 to part 740 countries, (4) wholly-owned subsidiaries of companies headquartered in Country Group A:5 and A:6 in supplement no. 1 to part 740 countries, or (5) joint ventures of companies headquartered in Country Group A:5 and A:6 with other companies headquartered in Country Groups A:5 and A:6. The case-by-case review policy does not apply to Russian-headquartered companies. This final rule also specifies in paragraph (b)

that license applications required under paragraph (a)(3) will be reviewed under a policy of denial in all cases.

6. License Exceptions for Section 746.8 License Requirements

Lastly, under new paragraph (c) (License Exceptions), this final rule specifies that certain license exceptions apply to § 746.8(a)(1) and (2). Specifically, the license exceptions that apply are: Certain sections of License Exception TMP for items for use by the news media, § 740.9(a)(9); License Exception GOV, § 740.11(b); License Exception TSU for software updates for civil end users provided those civil end users are subsidiaries or joint ventures of companies headquartered in the United States or a country or countries from Country Groups A:5 or A:6, § 740.13(c); License Exception BAG, excluding firearms and ammunition (paragraph (e)), § 740.14; License Exception AVS, § 740.15 (a) and (b); License Exception ENC, excluding Russian “government end users” and Russian state owned enterprises (SOEs), § 740.17; and License Exception CCD, § 740.19. This final rule also specifies in paragraph (c) that no license exceptions may overcome the license requirements in paragraph (a)(3) except as specified in the Entity List entry for a Footnote 3 entity on the Entity List in supplement no. 4 to part 744 of the EAR, which is consistent with the fact that entities on the Entity List are generally not eligible for license exceptions.

B. New Russia and Russia-MEU FDP Rules

In § 734.9 (Foreign-Direct Product (FDP) Rules), this final rule adds two new Foreign-Direct Product (FDP) rules as part of the new Russia sanctions. The first rule targets Russia as a destination, and the second targets Russian ‘military end users.’

1. Addition of Russia FDP Rule

Through the Russia FDP rule set out in new paragraph (f) of § 734.9 of the EAR, this rule establishes that a foreign-produced item located outside the United States is subject to the EAR if it meets both the product scope in paragraph (f)(1) of this section and the destination scope in paragraph (f)(2). License requirements, license review policy, and license exceptions applicable to the foreign-produced items that are subject to the EAR pursuant to this paragraph (f) are identified in § 746.8, described above. Product scope for the Russia FDP rule is defined in paragraph (f)(1)(i) (“Direct product” of “technology” or “software”) and paragraph (f)(1)(ii) (“Direct product” of

a complete plant or major component of a plant).

The criteria in paragraph (f)(1)(i) applies to a foreign-produced item that is not designated EAR99 and that is the “direct product” of U.S.-origin “technology” or “software” specified in any ECCN in product groups D or E in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL. The criteria in paragraph (f)(1)(ii) applies to a foreign-produced item that is not designated EAR99 and is produced by any plant or ‘major component’ of a plant that itself is a “direct product” of U.S.-origin “technology” or U.S.-origin “software” and specified in any ECCN in product groups D or E in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL. This is an expansive list of “technology” and “software,” which will result in many additional foreign-produced items being considered “subject to the EAR” compared to the other existing FDP rules that applied to Russia prior to the publication of this rule. The additional foreign-produced items that will be “subject to the EAR” will be subject to the new license requirements imposed through this rule under the Sanctions against Russia (new § 746.8), as described above.

For a foreign-produced item to be subject to the EAR under the Russia FDP rule, the criteria in new § 734.9(f)(2) (Destination scope of the Russia FDP rule) must also be met. New paragraph (f)(2) specifies that a foreign-produced item meets the destination scope of the Russia FDP rule if there is “knowledge” that the foreign-produced item is destined to Russia, or will be incorporated into, or used in the “production” or “development” of any “part,” “component,” or “equipment” not designated EAR99 and produced in or destined to Russia.

2. Addition of Russia-Military End User (Russia-MEU) FDP Rule

The Russia-MEU FDP rule set forth in new paragraph (g) targets Russian ‘military end users’ that, as described below, previously were on the MEU List and are being removed from the MEU List and added to the Entity List in Supplement No. 4 to part 744 of the EAR in this final rule. To address the significant support that these ‘military end users’ provide to the Russian military, a new and more expansive FDP rule is warranted for these identified ‘military end users’ under the EAR compared to the FDP rules that apply to certain destinations under the EAR. This final rule adds a new paragraph (g) to impose this new FDP rule targeting these Russian ‘military end users.’ A foreign-produced item located outside

the United States is subject to the EAR if it meets both the product scope in paragraph (g)(1) of § 734.9 and the destination scope in paragraph (g)(2). License requirements, license review policy, and license exceptions applicable to the foreign-produced items that are subject to the EAR pursuant to paragraph (g), which are now identified in § 746.8, are described above.

This final rule adds paragraph (g)(1)(i) (“Direct product” of “technology” or “software”) and paragraph (g)(1)(ii) (“Direct product” of a complete plant or major component of a plant) to define the product scope for the Russia-MEU FDP rule. The criteria in paragraph (g)(1)(i) extends to the “direct product” of “technology” or “software” subject to the EAR and specified in any ECCN in product groups D or E in any category of the CCL. Paragraph (g)(1)(ii) applies to a foreign-produced item that is produced by a plant or ‘major component’ of a plant that itself is a “direct product” of U.S.-origin “technology” or U.S.-origin “software” subject to the EAR and specified in any ECCN in product groups D or E in any category of the CCL, which is an expansive list of “technology” and “software.” This will result in many additional foreign-produced items being considered “subject to the EAR” compared to the other existing FDP rules that applied to these Russian ‘military end users’ prior to the publication of this rule. The additional foreign-produced items that will be “subject to the EAR” will be subject to the new license requirements being imposed as part of the sanctions against Russia set forth in new § 746.8.

For a foreign-produced item to be subject to the EAR, the criteria in new paragraph (g)(2) (End-user scope of the Russia MEU FDP rule) must be met. New paragraph (g)(2) specifies that a foreign-produced item meets the destination scope of the Russia MEU FDP rule if there is “knowledge” as specified in new paragraph (g)(2)(i) (Activities involving Footnote 3 designated entities) that a foreign-produced item will be incorporated into, or will be used in the “production” or “development” of any “part,” “component,” or “equipment” produced, purchased, or ordered by any entity with a footnote 3 designation in the license requirement column of the Entity List in supplement No. 4 to part 744 of the EAR.

In a corresponding change, this final rule adds a new footnote 3 to the Entity List for each of the Russian ‘military end users’ that are being removed from the MEU List and added to the Entity list as described below. The new footnote 3 to

the Entity List is a key part of the criteria for the Russia-MEU FDP rule and will include a cross reference back to §§ 734.9(g), 746.8, and 744.21. With the changes described below, forty-five entities on the Entity List now have a footnote 3 designation, as well as two additional entities being added to the Entity List and two existing entities that are being revised in this rule that will also have the footnote 3 designation, for a total of forty-nine entities with a footnote 3 designation. As specified in new paragraph (g)(2) of § 734.9, any entity with a footnote 3 designation in the license requirement column of the Entity List is a party to any transaction involving the foreign-produced item, e.g., as a “purchaser,” “intermediate consignee,” “ultimate consignee,” or “end-user.” A new Note 3 to paragraph (g) specifies that for purposes of paragraph (g), a ‘military end user’ is any entity listed on the Entity List under Russia with a footnote 3 designation.

C. Conforming Changes

Based on the foregoing changes to the EAR, this final rule also makes certain conforming changes to the Russia industry sector sanctions in § 746.5(a)(1); the Commerce Country Chart in supplement No. 1 to part 738; the Consumer Communication Devices license exceptions in § 740.19; and certain licensing review policies in part 742. In addition, this rule makes a correction to the Entity List FDP rule in § 734.9(e).

1. Russia Industry Sector Sanctions Changes

Under § 746.5 (Russian industry sector sanctions), this final rule revises paragraph (a)(1) (General prohibition) to make clarifying edits and add a cross reference to new § 746.8. As this paragraph specifies that there are other provisions of the EAR that apply to exports, reexports, and transfers (in-country) to Russia, a reference to the new sanctions against Russia in § 746.8 is needed to remind exporters, reexporters, and transferors to also look at § 746.8 when determining whether a license is required. This final rule also revises the text to remove the reference to Section 6 of the Export Administration Act of 1979 as this reference is outdated with the passage of the Export Control Reform Act of 2018 (ECRA), and a statutory reference is not necessary. This final rule also corrects the web address referenced in supplement No. 2 to part 746—Russian Industry Sector Sanction List to use the current web address being used by the U.S. Census Bureau regarding Schedule B information.

2. Commerce Country Chart Change

In supplement No. 1 to part 738—Commerce Country Chart, as a conforming change to the addition of new § 746.8, this final rule revises footnote 6 to add a reference to § 746.8, so exporters, reexporters, and transferors are aware of the need to also review license requirements in § 746.8 for items listed in any ECCN in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL.

3. License Exception CCD Changes

This final rule amends License Exception CCD (§ 740.19), which was previously limited to Cuba, by adding Russia as an additional eligible destination. While § 740.1(a) specifies that any license exception authorizing reexports also authorizes in-country transfers, provided the terms and conditions for reexports under that license exception are met, this final rule revises § 740.19 to add explicit references to transfers (in-country). BIS is making this clarification because new § 746.8 imposes controls on transfers (in-country) within Russia.

In § 740.19(a) (Authorizations), this rule adds Russia and a reference to transfers (in-country). Under the introductory text of paragraph (b) (Eligible commodities and software), this rule adds Russia and a reference to transfers (in-country) and removes an outdated reference to Sudan. Finally, under paragraph (c)(1) (Organizations), this final rule revises paragraph (c)(1)(i), which identifies eligible end users for License Exception CCD, to add Russia and a reference to transfers (in-country). The revision to paragraph (c)(1)(i) specifies that License Exception CCD is limited to the export, reexport, or transfer (in-country) of eligible commodities and software to and for the use of independent non-governmental organizations in Russia. This final rule further adds the Russian Government to the exclusions under paragraph (c)(1)(ii) and adds a new paragraph (c)(1)(iii) (Ineligible Russian Government Officials) to exclude the specified officials from receiving commodities and software under License Exception CCD. Only the end users named as eligible in paragraph (c) may receive the commodities and software eligible under License Exception CCD. This rule also amends paragraph (c)(2) as a correction and clarification, to state that License Exception CCD authorizes exports, reexports and transfers (in-country) to individuals.

When License Exception CCD was initially added to the EAR in 2009, the text of this paragraph only referenced

exports. However, a reading of paragraph (a) of the license exception and the preamble to the rule that added the license exception to the EAR indicates that License Exception CCD was intended to authorize both exports and reexports to individuals. *See* 74 FR 45985 at 45987 (9/8/2009). The addition of transfer (in-country) will clarify that the authorization applies not only to reexports, but also to transfers (in-country).

4. Part 742 (Control Policy—CCL Based Controls) Changes

In part 742, as conforming changes to the license review policy of denial added under paragraph (b) to new § 746.8, this final rule makes changes to license review policies in five sections: 742.2 (Proliferation of chemical and biological weapons), 742.3 (Nuclear nonproliferation), 742.4 (National security), 742.5 (Missile technology), and 742.6 (Regional stability).

Under § 742.2, this final rule revises the second sentence of paragraph (b)(4) to change the license review policy from presumption of denial to policy of denial. This final rule adds two additional sentences to clarify that certain items, such as items to Russia in support of U.S.-Russia civil space cooperation activities, are reviewed on a case-by-case basis as specified under § 746.8(b).

In both §§ 742.3 and 742.5, this final rule revises the second sentence of paragraph (b)(4) to change the license review policy from presumption of denial to policy of denial. For these sections, this final rule also revises the third sentence to remove the reference to commercial space launches from the case-by-case license review policy, and adds a cross reference to the license review policy under § 746.8(b).

Under § 742.4, this final rule revises the third sentence of paragraph (b)(7)(i) to remove the reference to Russia because the license review policy set forth in the paragraph will no longer apply to Russia. This final rule also adds a new paragraph (b)(9), which states that all applications for Russia will be reviewed in accordance with the licensing policy set forth in § 746.8(b).

Under § 742.6, this final rule revises paragraph (b)(8) to remove the reference to Russia because the license review policy set forth in the paragraph will no longer apply to Russia. This final rule also adds a new paragraph (b)(9), specifying that all applications for Russia will be reviewed in accordance with the licensing policy set forth in § 746.8(b). Finally, to establish that license applications for export, reexport or transfer (in-country) to or within

Russia will also be reviewed in accordance with the foreign policy interest of promoting the observance of human rights throughout the world and consistent with United States arms embargo policies in § 126.1 of the ITAR (22 CFR 126.1), this final rule adds text to new paragraph (b)(9) to carry over certain portions of the preexisting license review policy for Russia under paragraph (b)(8).

5. Entity List FDP Rule Correction

On February 2, 2022, BIS published a rule in the **Federal Register** entitled “Foreign-Direct Product Rules: Organization, Clarification, and Correction” (87 FR 6022), which contained an error. In § 734.9(e), BIS unintentionally omitted the term “U.S.-origin” in the phrase ““direct product” of “technology” or “software” subject to the EAR.” With this final rule, BIS fixes that error by reinserting “U.S.-origin” in ““direct product” of “U.S.-origin” “technology” or “U.S.-origin” “software”.” Lastly, as clarification for purposes of the new Russia-Military End User FDP rule that this rule adds to § 734.9(g), as described above, BIS did not intend to include “U.S.-origin” for purposes of paragraph (g)(1)(i), but did intend its inclusion in paragraph (g)(1)(ii), as well as in new paragraphs (f)(1)(i) and (ii) for the Russia FDP rule. This final rule, thus, makes clarifying revisions to § 734.9.

D. Changes to ‘Military End Use’ and ‘End User’ Controls for Russia

This final rule revises the scope of the ‘military end use’ and ‘military end user’ controls under § 744.21 of the EAR to reflect the expanded controls for Russia, which, with the publication of this final rule, apply to all items “subject to the EAR” instead of to the narrower subset of items identified in supplement no. 2 to part 744. As a result of the expanded controls for Russia for ‘military end users’ and ‘military end uses,’ BIS is revising the Entity List in supplement No. 4 to part 744 and the Military End-User (MEU) List in supplement no. 7 to the same part to make conforming changes. Accordingly, this final rule revises § 744.21 paragraphs as follows to reflect the expanded ‘military end use’ and ‘military end user’ controls for Russia:

In paragraph (a), this final rule revises the first sentence to remove Russia from the part of the sentence that specifies the prohibition applies to the countries listed. This final rule further revises that first sentence to add, after Venezuela, the phrase “or any item subject to the EAR except for food or medicine designated as EAR99, or ECCN 5A992.c

and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs) to Russia” to specify that the prohibition is broader for Russia than it is for the other countries subject to the requirements of § 744.21.

BIS is revising paragraph (b)(1) (‘Military End-User’ (MEU) List) to provide guidance for entities on the MEU List and for Russian entities placed on the Entity List based on § 744.21(b). Because the prior requirements of the MEU List were limited to items identified in supplement no. 2 to part 744 and the Russia-MEU restrictions now apply to all items subject to the EAR as a consequence of the publication of this rule, BIS is removing Russian entities that were listed on the MEU List prior to this rule and placing them instead on the Entity List. This change is consistent with the regulatory construct for these two proscribed persons lists under the EAR (*i.e.*, the MEU List restrictions apply to items identified in supplement no. 2 to part 744 and the Entity List restrictions, in most cases, apply to all items subject to the EAR). This final rule removes the references to Russia in the context of the MEU List and specifies that such entities may be added to supplement No. 4 of part 744—the Entity List—and are subject to license requirements that apply to all items “subject to the EAR” except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs).

As conforming changes regarding the End-User Review Committee (ERC) processes for the MEU List, this final rule revises paragraph (b)(1)(i) (End-User Review Committee (ERC)) to add references to the Entity List when the MEU List is referenced for the procedures in supplement No. 5 to part 744—Procedures for End-User Review Committee Entity List and ‘Military End User’ (MEU) List Decisions. This change is made to clarify that the ERC procedure for adding entities to the MEU List also apply to additions, modifications and removals from the Entity List for entities added based on § 744.21 of the EAR.

Under paragraph (b)(1)(ii) (License requirements for parties to the transaction), this final rule revises the paragraph to clarify that the license requirements for Burma, Cambodia, the People’s Republic of China, and Venezuela continue to apply for exports, reexports, and transfers (in-country) of any item specified in supplement no. 2 to part 744 when an entity included on the MEU List or meeting the definition

of ‘military end-user’ as defined in § 744.21(g) is a party to the transaction as described in § 748.5(c) through (f) of the EAR. This final rule also revises paragraph (b)(1)(ii) to add a sentence to clarify that, for purposes of Russia, a license requirement applies to all items subject to the EAR for entities listed in supplement No. 4 to part 744 (the Entity List) pursuant to § 744.21 when such an entity is a party to the transaction as described in § 748.5(c) through (f) of the EAR. These changes are necessary because, with the publication of this final rule, the license requirements for Russia will now be broader than for the other four countries.

Under paragraph (b)(2) (Requests for removal from or modification of ‘Military End User’ List (MEU)), this final rule revises the heading to add a reference to the Entity List. This final rule also adds two more references to the Entity List in this paragraph to specify that the process for requesting removal or modification is the same for entities listed on the MEU List or the Entity List on the basis of § 744.21 of the EAR.

Under paragraph (e) (License review standards), this final rule revises the existing license review policy in paragraph (e)(1) to make it specific to Burma, Cambodia, the People’s Republic of China (China), and Venezuela. This final rule adds a new sentence to paragraph (e)(1) to specify that the license review policy for application to or within Russia for the license requirements described in paragraph (a) will be a policy of denial.

Under paragraph (g) (‘Military end user’), the final rule makes a correction to add back the parenthetical phrase “(excluding those described in § 744.22(f)(2) of the EAR)” after the term government intelligence or reconnaissance organizations. This text was inadvertently removed from the EAR in a December 9, 2021 (86 FR 70018) final rule.

BIS estimates these changes to § 744.21 will result in an additional 75 license applications being submitted to BIS annually.

E. Military End-User (MEU) List and Entity List Changes for Russian Entities

Under § 744.11(b) (Criteria for revising the Entity List), entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, and those acting on behalf of such entities, may be

added to the Entity List. Paragraphs (b)(1) through (5) of § 744.11 provide an illustrative list of activities that could be considered contrary to the national security or foreign policy interests of the United States. The Entity List in supplement no. 4 to part 744 identifies the entities so designated. The EAR impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) when an entity that is listed on the Entity List is a party to the transaction as described in § 748.5(c) through (f) of the EAR. The license review policy for each listed entity is identified in the “License Review Policy” column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The MEU List in supplement no. 7 to part 744 identifies entities that have been determined by the End-User Review Committee (ERC) to be ‘military end users’ pursuant to § 744.21. That section imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) when an entity listed on the MEU List is a party to the transaction as described in § 748.5(c) through (f) of the EAR, as specified in supplement no. 7 to part 744 and in § 744.21. Entities are listed on the MEU List under the destinations of Burma, Cambodia, China, or Venezuela. The license review policy for each listed entity is identified in the introductory text of the MEU List and in § 744.21(e). The MEU List’s introductory text and § 744.21 also specify the scope of the license requirements and limitations on the use of EAR license exceptions.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List and the MEU List. The ERC makes all decisions to add an entry to the Entity List or MEU List by majority vote and all decisions to remove or modify an entry by unanimous vote. Decisions on Entity or MEU List entries may also be made by higher-level officials of agencies represented on the ERC.

1. Additions to the Entity List

This rule implements the decision of the Departments represented on the ERC to add forty-seven entities to the Entity List, consisting of the forty-five entities being moved from the MEU List to the Entity List and an additional two entities that are newly listed in the EAR.

The agencies represented on the ERC made the decision to move the forty-five entities identified below from the MEU List to the Entity List pursuant to the standards set forth in §§ 744.11(b) and 744.21(b) (including the revisions made in this final rule to the scope of the latter section) of the EAR. Under the circumstances of the Russia invasion of the Ukraine, there is a greater national security and foreign policy threat posed by entities that have previously been found to be supporting ‘military end uses’ in Russia. The ERC used the same standards set forth in §§ 744.11(b) and 744.21(b) to approve the additional two entities being added to the Entity List. These forty-seven entities are ‘military end users’ under the EAR. The license requirements that will apply to them as a consequence of their addition to the Entity List will further limit their ability to obtain items subject to the EAR or obtain the benefit of technology or software subject to the EAR when supporting military activities outside of Russia in a manner contrary to U.S. national security or foreign policy interests.

One of the forty-five entities being moved from the MEU List to the Entity List, described further below, is the Ministry of Defence of the Russian Federation, including the Armed Forces of Russia and all operating units wherever located. This entity was listed as the Ministry of Defence RF on the MEU List, but will be listed on the Entity List under its full name, Ministry of Defence of the Russian Federation, in this final rule. The entry this rule adds for the Ministry of Defence of the Russian Federation includes the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations of the Russian Federation. In addition, this entry restricts exports, reexports and transfers (in-country) to the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations of Russia wherever located worldwide.

As a result of the changes to § 744.21 described in this final rule, the license requirements for ‘military end users’ in

Russia, now apply to all items “subject to the EAR,” except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs).

Accordingly, the agencies represented on the ERC decided to add forty-five entities to the Entity List. As part of this ERC review effort, the ERC also determined that the additional two entities should be added to the Entity List because they are ‘military end users.’ The license requirements of the MEU List are limited to items identified in supplement no. 2 to part 744.

Therefore, the agencies represented on the ERC determined that the MEU List was no longer the appropriate supplement of the EAR in which to list these forty-five ‘military end users’ in Russia and that, for the additional two entities being added, the public would benefit from their identification on the Entity List as ‘military end users.’

The forty-five entities being moved from the MEU List to the Entity List are: Admiralty Shipyard JSC; Aleksandrov Scientific Research Technological Institute NITI; Argut OOO; Communication Center of the Ministry of Defence; Federal Research Center Boreskov Institute of Catalysis; Federal State Budgetary Enterprise of the Administration of the President of Russia; Federal State Budgetary Enterprise Special Flight Unit Rossiya of the Administration of the President of Russia; Federal State Unitary Enterprise Dukhov Automatics Research Institute (VNIIA); Foreign Intelligence Service (SVR); Forensic Center of Nizhny Novgorod Region Main Directorate of the Ministry of Interior Affairs; Irkut Corporation; Irkut Research and Production Corporation Public Joint Stock Company; Joint Stock Company Scientific Research Institute of Computing Machinery; JSC Central Research Institute of Machine Building (JSC TsNIMash); JSC Kazan Helicopter Plant Repair Service; JSC Rocket and Space Centre—Progress; Kamensk-Uralsky Metallurgical Works J.S. Co.; Kazan Helicopter Plant PJSC; Komsomolsk-na-Amur Aviation Production Organization (KNAAPO); Ministry of Defence of the Russian Federation; Moscow Institute of Physics and Technology; NPO High Precision Systems JSC; NPO Splav JSC; Oboronprom OJSC; PJSC Beriev Aircraft Company; PJSC Irkut Corporation; PJSC Kazan Helicopters; POLYUS Research Institute of M.F. Stelmakh Joint Stock Company; Promtech-Dubna, JSC; Public Joint Stock Company United Aircraft Corporation; Radiotechnical and

Information Systems (RTI) Concern; Rapart Services LLC; Rosoboronexport OJSC (ROE); Rostec (Russian Technologies State Corporation); Rostekh—Azimuth; Russian Aircraft Corporation MiG; Russian Helicopters JSC; Sukhoi Aviation JSC; Sukhoi Civil Aircraft; Tactical Missiles Corporation JSC; Tupolev JSC; UEC-Saturn; United Aircraft Corporation; United Engine Corporation; and United Instrument Manufacturing Corporation.

The ERC decided to add two new entities to the Entity List: The International Center for Quantum Optics and Quantum Technologies LLC, and SP Kvant. Both are being added, under the destination of Russia, to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of nuclear explosive activities, unsafeguarded nuclear activities, and safeguarded and unsafeguarded nuclear fuel-cycle activities for Russia. The ERC determined that these activities are contrary to the national security and foreign policy interests of the United States under § 744.11(b) of the EAR. These two entities are considered ‘military end-users’ for purposes of § 744.21(b).

Pursuant to §§ 744.11(b) and 744.21(b) of the EAR, the ERC determined that the conduct of the above-described forty-seven entities raises sufficient concerns that prior review, via the imposition of a license requirement for exports, reexports, or transfers (in-country), of all items subject to the EAR, except for food or medicine designated as EAR99 involving these forty-seven entities is appropriate. This rule also excludes ECCN 5A992.c and 5D992.c from the license requirement involving eight of the entities being added that are not Russian “government end users” and Russian state-owned enterprises (SoEs). The ERC also determined that the possible issuance of license denials or the possible imposition of license conditions on shipments to these entities will enhance BIS’s ability to prevent violations of the EAR or otherwise protect U.S. national security or foreign policy interests.

For the forty-seven entities added to the Entity List in this final rule, BIS imposes a license requirement that applies to all items subject to the EAR. BIS imposes a license review policy of denial for these forty-seven entities. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) where the entities added to the Entity List in this rule are parties to the transaction as described in § 748.5(c) through (f), with one exception. The United States Government authorization under

License Exception GOV (§ 740.11(b)(2) and (e)) is available for two entities being added to the Entity List: JSC Central Research Institute of Machine Building (JSC TsNIIMash) and JSC Rocket and Space Centre—Progress.

Also as described above under the description of § 734.9, this final rule adds new Footnote 3 to the Entity List for each of the forty-five Russian ‘military end users’ that are being moved from the MEU List to the Entity list, as well as to the additional two entities added to the Entity List. New Entity List footnote 3 is part of the criteria for Russia-MEU FDP rule and will include a cross reference back to §§ 734.9(g) and 746.8. More entities may be added to Footnote 3 in the future.

For the reasons described above, this final rule adds the following forty-seven entities to the Entity List. The two new entities added to the Entity List that were not previously on the MEU List are designated with an asterisk:

RUSSIA

- Admiralty Shipyard JSC;
- Aleksandrov Scientific Research Technological Institute NITI;
- Argut OOO;
- Communication Center of the Ministry of Defence;
- Federal Research Center Boreskov Institute of Catalysis;
- Federal State Budgetary Enterprise of the Administration of the President of Russia;
- Federal State Budgetary Enterprise Special Flight Unit Rossiya of the Administration of the President of Russia;
- Federal State Unitary Enterprise Dukhov Automatics Research Institute (VNIIA);
- Foreign Intelligence Service (SVR);
- Forensic Center of Nizhniy Novgorod Region Main Directorate of the Ministry of Interior Affairs;
- *International Center for Quantum Optics and Quantum Technologies LLC;
- Irkut Corporation;
- Irkut Research and Production Corporation Public Joint Stock Company;
- Joint Stock Company Scientific Research Institute of Computing Machinery;
- JSC Central Research Institute of Machine Building (JSC TsNIIMash);
- JSC Kazan Helicopter Plant Repair Service;
- JSC Rocket and Space Centre—Progress;
- Kamensk-Uralsky Metallurgical Works J.S. Co.;
- Kazan Helicopter Plant PJSC;
- Komsomolsk-na-Amur Aviation Production Organization (KNAAPO);

- Ministry of Defence of the Russian Federation including the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations of the Russian Federation;
- Moscow Institute of Physics and Technology;
- NPO High Precision Systems JSC;
- NPO Splav JSC;
- Oboronprom OJSC;
- PJSC Beriev Aircraft Company;
- PJSC Irkut Corporation;
- PJSC Kazan Helicopters;
- POLYUS Research Institute of M.F. Stelmakh Joint Stock Company;
- Promtech-Dubna, JSC;
- Public Joint Stock Company United Aircraft Corporation;
- Radiotechnical and Information Systems (RTI) Concern;
- Rapart Services LLC;
- Rosoboronexport OJSC (ROE);
- Rostec (Russian Technologies State Corporation);
- Rostekh—Azimuth;
- Russian Aircraft Corporation MiG;
- Russian Helicopters JSC;
- *SP Kvant;
- Sukhoi Aviation JSC;
- Sukhoi Civil Aircraft;
- Tactical Missiles Corporation JSC;
- Tupolev JSC;
- UEC-Saturn;
- United Aircraft Corporation;
- United Engine Corporation; and
- United Instrument Manufacturing Corporation.

The acronym “a.k.a.,” which is an abbreviation of “also known as,” is used in entries on the Entity List to identify aliases, thereby assisting exporters, reexporters, and transferors in identifying entities on the Entity List.

2. Revision to the Entity List

This rule implements a modification to two existing entries for “Federal Security Service (FSB)” and “Main Intelligence Directorate” that were both first added to the Entity List on January 4, 2017 (82 FR 724). Specifically, this rule modifies the entry for these entities by adding a Footnote 3 designation as described above because these existing entities have also been determined by the ERC to be ‘military end users.’

3. Removals From the MEU List

This rule removes the forty-five entities located in Russia that are described above from the MEU List. These forty-five entities were added to the MEU List in three final rules. One entry, for JSC Kazan Helicopter, was added to the MEU List on July 12, 2021

(86 FR 36509). One entry, for Moscow Institute of Physics and Technology, was added to the MEU List on November 26, 2021 (86 FR 67323). The remaining forty-three entries were added to the MEU List on December 23, 2020 (85 FR 83799). As described above, the ERC determined to remove these forty-five entries from the MEU List and add them to the Entity List to reflect the new scope of the license requirements for military end users in Russia pursuant to § 744.21, which will now apply to all items “subject to the EAR” except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs). The listing of entities added to the Entity List, above, without an asterisk is identical to the list of entities being removed from the MEU List.

F. Comprehensive Export Restrictions for the Covered Regions of Ukraine; Conforming Revisions to Crimea Region of Ukraine Provisions

1. Background on Need for These Changes

On February 21, 2022, President Joseph Biden issued Executive Order (E.O.) 14065, finding that the Russian Federation (Russia)’s “purported recognition of the so-called Donetsk People’s Republic (DNR) or Luhansk People’s Republic (LNR) regions of Ukraine contradicts Russia’s commitments under the Minsk agreements and further threatens the peace, stability, sovereignty, and territorial integrity of Ukraine, and thereby constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.” E.O. 14065 builds upon and expands the scope of the national emergency declared by President Barack Obama in E.O. 13660 of March 6, 2014 with respect to Russia’s actions involving Ukraine. Subsequent E.O.s, including E.O. 13661 of March 16, 2014, E.O. 13662 of March 20, 2014, and E.O. 13685 of December 19, 2014, either expanded further or otherwise took additional steps under President Obama’s declaration of national emergency to address Russia’s destabilizing conduct.

Section 10 of E.O. 14065 directs all executive departments and agencies of the United States to take all appropriate measures within their authority to implement the E.O. Section One of E.O. 14065 prohibits “the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever

located, of any goods, services, or technology to the Covered Regions[.]” Consistent with and to implement this prohibition, BIS is expanding the restrictions in § 746.6 of the EAR, to apply to export, reexport, and in-country transfer transactions involving the so-called DNR and LNR regions of Ukraine (collectively, the Covered Regions). BIS initially promulgated the § 746.6 restrictions consistent with and to implement E.O. 13685 of December 19, 2014 (79 FR 77357), to which E.O. 14065 is similar in scope, pursuant to which President Obama issued an export prohibition related to the Crimea region of the Ukraine, to address the Russian occupation of that region in 2014. Consistent with and to implement this prohibition, BIS imposed new license requirements with respect to certain export, reexport, and in-country transfer transactions involving the Crimea region of Ukraine. (80 FR 4778, Jan. 29, 2015)

In this rule BIS amends the EAR by imposing a license requirement for the export and reexport to the Covered Regions of Ukraine, and the transfer within the Covered Regions of Ukraine, of all items subject to the EAR, other than food and medicine designated as EAR99 and certain software for internet-based personal communications. For purposes of this rule, and consistent with E.O. 13685 and E.O. 14065, the term ‘Covered Regions of Ukraine’ includes the land territory in the DNR and LNR regions, as well as any maritime areas over which sovereignty, sovereign rights, or jurisdiction is claimed based on occupation of (Crimea), or purported sovereignty (DNR and LNR) over, those land territories. In addition to these substantive changes to § 746.6 of the EAR, BIS is making organizational and related technical edits to account for these restrictions on the Covered Regions of Ukraine and to simplify § 746.6 and facilitate compliance with the provision’s requirements.

This rule establishes a policy of denial for the review of applications involving all such exports or reexports to the Covered Regions of Ukraine and transfers within the Covered Regions of Ukraine, except with respect to items not exempt from the license requirement but authorized under the Department of the Treasury’s Office of Foreign Assets Control (OFAC) Ukraine related General Licenses (discussed in greater detail in the next paragraph), which BIS will review on a case-by-case basis. Certain license exceptions are available for exports or reexports to the Covered Regions of Ukraine or transfers within the Covered Regions of Ukraine,

specifically, the same license exceptions currently available under § 746.6 of the EAR to the Crimea region of Ukraine.

As stated above, license applications for exports, reexports or transfers authorized under OFAC General Licenses will be reviewed on a case-by-case basis. In conjunction with the issuance of E.O. 14065, OFAC issued six General Licenses (Ukraine General License numbers 17–22) to ensure that humanitarian and other related activities can continue in these regions. These General Licenses allow a short-term wind down of activities, as well as for the export to the regions of food, medicine, and medical devices, and ensure personal remittances can continue to flow. They also allow telecommunications and internet services to remain operational, and mail services to continue, as well as allow international organizations to be able to provide aid to the people in the Covered Regions of Ukraine.

This final rule includes a savings clause as described below. If an export, reexport or transfer (in-country) does not qualify for the savings clause described below but falls within the scope of OFAC’s Ukraine related General Licenses, an applicant may note this fact in its BIS license application either under block 24 or in a separate attachment. BIS will consider this fact as part of the license review process.

As a reminder, the Donetsk People’s Republic and Luhansk People’s Republic are listed on the Entity List. A license applies for the export, reexport, and transfer (in-country) of all items subject to the EAR that are destined for these two entities. *See* 79 FR 42452 (July 22, 2014) (“Donetsk People’s Republic and Luhansk People’s Republic are both separatist organizations that operate in eastern Ukraine.”).

2. Revisions to the EAR for the Covered Regions of Ukraine; Conforming Revisions to Crimea Region of Ukraine Provisions

To implement the changes described above, this final rule revises § 746.6 (Crimea region of Ukraine and the Covered Regions of Ukraine) in part 746 (Embargoes and Other Special Controls) of the EAR. The existing restrictions regarding Crimea are now located in paragraph (a)(1), and new paragraph (a)(2) imposes a license requirement for exports and reexports to the Covered Regions of Ukraine, and the transfer within the Covered Regions of Ukraine, of all items subject to the EAR, other than food and medicine designated as EAR99 and certain software that is necessary to enable the exchange of personal communications over the

internet. Such software must either be designated EAR99 or classified as mass market software under Export Control Classification Number (ECCN) 5D992.c of the EAR and must be widely available to the public at no cost to the user. The license review policy for Crimea is now located in paragraph (b)(1), and new paragraph (b)(2) specifies that the license review policy for the Covered Regions of Ukraine is a policy of denial, except for items authorized under OFAC's Ukraine related General Licenses which will be reviewed on a case-by-case basis.

The amendments to § 746.6 of this rule do not change the license requirements or available license exceptions for the Crimea region of Ukraine. However, this rule amends the licensing policy, as set forth in new paragraph (b), from a presumption of denial to a policy of denial, to harmonize the license review policy for the Crimea region of Ukraine with the more restrictive policy of denial that applies to the Covered Regions of Ukraine given the significant national security and foreign policy concerns related to those areas.

Paragraph (c) specifies the license exceptions that are available to overcome the license requirements set forth in this section with respect to either the Crimea region of Ukraine or the Covered Regions of Ukraine. No license exceptions other than those license exceptions (or paragraphs of license exceptions) listed in paragraph (c) are available to overcome the license requirements of § 746.6 of the EAR. New paragraph (d) defines the terms 'Covered Regions of Ukraine' and 'software necessary to enable the exchange of personal communications over the internet' for purposes of this provision.

The license requirements imposed under part 746 of the EAR are independent of the Commerce Control List (CCL)-based license requirements. However, this rule revises the cross reference to § 746.6 by revising footnote 8 to the Commerce Country Chart in supplement No. 1 to part 738. This footnote 8 makes persons aware of the additional part 746 license requirements under § 746.6 that apply for the 'Crimea region of Ukraine and the Covered Regions of Ukraine.' When applying for a license to the Crimea region of Ukraine or the Covered Regions of Ukraine, applicants should select 'Crimea, DNR, and LNR regions' in the drop-down menu option under the country of Ukraine in the Simplified Network Application Processing System (SNAP-R).

This final rule, as a conforming change to the addition of § 746.6 and the

restrictions under paragraph (c), adds 'the Covered Regions of Ukraine' to the general restriction on the use of license exceptions in § 740.2 of the EAR for sanctioned countries by revising the parenthetical phrase "(Cuba, Iran, North Korea, Syria, and Crimea region)." This final rule adds 'the Covered Regions of Ukraine' to this parenthetical phrase because the license requirements under § 746.6 apply to all items subject to the EAR, and the only license exceptions available to overcome the license requirement are those specified in § 746.6.

In addition to the EAR controls that this final rule is adding to § 746.6, exporters, reexporter and transferors will also be required to ensure that any transaction with Crimea and 'the Covered Regions of Ukraine' occurs in accordance with all applicable OFAC requirements. BIS and OFAC both exercise licensing jurisdiction for the Crimea region of Ukraine and for "the Covered Regions of Ukraine," so for most exports, reexports and transfers (in-country), an authorization will be required from both BIS and OFAC.

Lastly, this final rule revises the definition of "Food" in § 772.1 to include a reference to 'the Covered Regions of Ukraine' along with North Korea, Syria, and Crimea that are referenced in the definition. BIS estimates that these new controls for the § 746.6 will result in an additional 20 license applications being submitted to BIS annually.

G. Russia: Amendments to Supplement No. 1 to Part 740 of the EAR Consistent With the ITAR § 126.1

In supplement no. 1 to part 740, this final rule updates the Country Group designation for Russia to reflect its identification by the Department of State as a country subject to a United States arms embargo. BIS harmonizes the arms embargo-related provisions in the EAR with the Directorate of Defense Trade Control's (DDTC's) regulation of arms embargoes in § 126.1 of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.1, Prohibited Exports, Imports, and Sales to or from Certain Countries). ITAR § 126.1 includes countries subject to United Nations Security Council (UNSC) and U.S. arms embargoes. BIS primarily implements such controls through Country Group D:5 "U.S. Arms Embargoed Countries," in supplement no. 1 to part 740 of the EAR. With this rule, BIS revises Country Group D to add Russia to Country Group D:5 consistent with the Department of State's amendments adding this country

to ITAR § 126.1 on March 18, 2021 (86 FR 14802).

Countries listed in Country Group D:5 are subject to additional restrictions in the EAR, including with respect to *de minimis* U.S. content, license exception availability, and licensing policy for certain items. For example, license applications for the export or reexport of items classified under 9x515 or "600 series" Export Control Classification Numbers (ECCNs) to countries in Country Group D:5 are reviewed consistent with the policies in § 126.1 of the ITAR, as provided in paragraph (b)(1)(ii) of § 742.4 of the EAR.

Savings Clause

For the sanctions against Russia added under § 746.8(a)(2) and (3), shipments of items removed from eligibility for a License Exception or reexport or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on March 26, 2022, pursuant to actual orders for reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or reexport or transfer (in-country) without a license (NLR).

For all other changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on February 24, 2022, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. Sections 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. To the extent it applies to certain activities that are the subject of this rule, the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (codified, as amended, at 22 U.S.C.

Sections 7201–7211) also serves as authority for this rule. This action also implements measures pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, and the emergency expanded upon by Executive Order 14065 of February 21, 2022.

Rulemaking Requirements

1. This final rule is not a “significant regulatory action” because it “pertain[s]” to a “military or foreign affairs function of the United States” under sec. 3(d)(2) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves the following OMB-approved collections of information subject to the PRA: 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 29.6 minutes for a manual or electronic submission; 0694–0096 “Five Year Records Retention Period,” which carries a burden hour estimate of less than 1 minute; and 0607–0152 “Automated Export System (AES) Program,” which carries a burden hour estimate of 3 minutes per electronic submission. This rule changes the respondent burden under these control numbers by increasing the estimated number of submissions by 2,445. Specifically, BIS estimates that these new controls on Russia under the EAR will result in an increase of 2,445 license applications submitted annually to BIS. BIS estimates the burden hours associated with these collections would increase by 1,247 (*i.e.*, 2,445 applications × 30.6 minutes per response) for a total estimated cost increase of \$37,410 (*i.e.*, 1,247 hours × \$30 per hour). The \$30 per hour cost estimate for OMB control number 0694–0088 is consistent with the salary data for export compliance specialists currently available through *glassdoor.com* (*glassdoor.com* estimates that an export compliance specialist makes \$55,280 annually, which computes to roughly \$26.58 per hour). This increase is expected to exceed the existing estimates currently associated with OMB control numbers 0694–0088, but not for 0694–0096 and 0607–0152 which have minimal burden increases as a result of this rule. Consistent with

5 CFR 1320.13, BIS requested emergency clearance for an increase in the burden estimate under collection 0694–0088 because of the additional license requirements imposed by this rule. OMB has approved the emergency collection for the increase in the total number of licenses.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821) (ECRA), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)).

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Parts 738 and 772

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 734, 738, 740, 742, 744, 746, and 772 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

■ 1. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 10, 2021, 86 FR 62891 (November 12, 2021).

■ 2. Section 734.9 is amended as follows:

■ a. In paragraph (e)(1)(ii), remove the text “‘direct product’ of ‘technology’ or ‘software’ subject to the EAR” and add, in its place, the text “‘direct product’ of U.S.-origin ‘technology’ or ‘software’”.

■ b. Add paragraphs (f) and (g).

The additions read as follows:

§ 734.9 Foreign-Direct Product (FDP) Rules.

* * * * *

(f) *Russia FDP rule.* A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (f)(1) of this section and the destination scope in paragraph (f)(2) of this section. See § 746.8 of the EAR for license requirements, license review policy, and license exceptions applicable to foreign-produced items that are subject to the EAR pursuant to this paragraph (f).

(1) *Product scope of Russia FDP rule.* The product scope applies if a foreign-produced item meets the conditions of either paragraph (f)(1)(i) or (ii) of this section.

(i) “*Direct product*” of “*technology*” or “*software*.” A foreign-produced item meets the product scope of this paragraph (f)(1)(i) if the foreign-produced item is not designated EAR99 and is a “direct product” of U.S.-origin “technology” or “software” subject to the EAR that is specified in any ECCN in product groups D or E in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL; or

(ii) “*Direct product*” of a complete plant or ‘major component’ of a plant. A foreign-produced item, meets the product scope of this paragraph (f)(1)(ii) if the foreign-produced item is not designated EAR99 and is produced by any plant or ‘major component’ of a plant that is located outside the United States, when the plant or ‘major component’ of a plant, whether made in the United States or a foreign country, itself is a “direct product” of U.S.-origin “technology” or “software” subject to the EAR that is specified in any ECCN

in product groups D or E in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL.

(2) *Destination scope of the Russia FDP rule.* A foreign-produced item meets the destination scope of this paragraph (f)(2) if there is “knowledge” that the foreign-produced item is destined to Russia or will be incorporated into or used in the “production” or “development” of any “part,” “component,” or “equipment” not designated EAR99 and produced in or destined to Russia.

(g) *Russia-Military End User FDP rule.* A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (g)(1) of this section and the end-user scope in paragraph (g)(2) of this section. See § 746.8 of the EAR for license requirements, license review policy, and license exceptions applicable to foreign-produced items that are subject to the EAR pursuant to this paragraph (g).

(1) *Product Scope of Russia-Military End User FDP rule.* The product scope applies if a foreign-produced item meets the conditions of either paragraph (g)(1)(i) or (ii) of this section.

(i) *“Direct product” of “technology” or “software.”* A foreign-produced item meets the product scope of this paragraph (g)(1)(i) if the foreign-produced item is a “direct product” of “technology” or “software” subject to the EAR and specified in any ECCN in product groups D or E in any categories of the CCL; or

(ii) *“Direct product” of a complete plant or ‘major component’ of a plant.* A foreign-produced item meets the product scope of this paragraph (g)(1)(ii) if the foreign-produced item is produced by any plant or ‘major component’ of a plant that is located outside the United States, when the plant or ‘major component’ of a plant, whether made in the United States or a foreign country, itself is a “direct product” of U.S.-origin “technology” or “software” subject to the EAR that is specified in any ECCN in product groups D or E in any categories of the CCL.

(2) *End-user scope of the Russia ‘Military End User’ FDP rule.* A foreign-produced item meets the end-user scope of this paragraph (g)(2) if there is “knowledge” that:

(i) *Activities involving footnote 3 designated entities.* The foreign-produced item will be incorporated into, or used in the “production” or “development” of any “part,” “component,” or “equipment” produced, purchased, or ordered by any entity with a footnote 3 designation in the license requirement column of the Entity List in Supplement No. 4 to part 744 of the EAR; or

(ii) *Footnote 3 designated entities as transaction parties.* Any entity with a footnote 3 designation in the license requirement column of the Entity List in Supplement No. 4 to part 744 of the EAR is a party to any transaction involving the foreign-produced item, e.g., as a “purchaser,” “intermediate consignee,” “ultimate consignee,” or “end-user.”

Note 3 to paragraph (g). A ‘military end user’ for purposes of paragraph (g) is any entity listed on the Entity List in Supplement No. 4 to part 744 of the EAR under Russia with a footnote 3 designation.

■ 3. Supplement No. 2 to part 734 is amended by revising the third and fourth sentences of paragraph (a)(1) to read as follows:

Supplement No. 2 to Part 734—Guidelines for De Minimis Rules

(a) * * *
 (1) * * * For purposes of identifying U.S.-origin controlled content, you should consult the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR and controls described in part 746 of the EAR (excluding U.S.-origin content that meets the criteria in § 746.8(a)(5)). Part 744 of the EAR should not be used to identify controlled U.S. content for purposes of determining the applicability of the *de minimis* rules. * * *

PART 738—COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART

■ 4. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 5. Supplement no. 1 to part 738 is amended by revising footnotes 6 and 8 to read as follows:

Supplement No. 1 to Part 738—Commerce Country Chart

* * * * *
 6 See § 746.5 of the EAR for additional license requirements under the Russian Industry Sector Sanctions for ECCNs 0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999 and items identified in Supplement No. 2 to part 746 of the EAR. See § 746.8 of the EAR for Sanctions against Russia, including additional license requirements for items listed in any ECCN in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL.
 * * * * *

8 See § 746.6 of the EAR for additional license requirements for exports and

reexports to the Crimea region of Ukraine and the so-called Donetsk People’s Republic (DNR) and Luhansk People’s Republic (LNR) regions of Ukraine and transfers (in-country) within the Crimea, DNR, and LNR regions of Ukraine for all items subject to the EAR, other than food and medicine designated as EAR99 and certain EAR99 or ECCN 5D992.c software for internet-based communications.

PART 740—LICENSE EXCEPTIONS

■ 6. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 7. Section 740.2 is amended by revising paragraph (a)(6) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *
 (6) The export or reexport is to a sanctioned destination (Cuba, Iran, North Korea, Syria, Crimea region of Ukraine, and the so-called Donetsk People’s Republic (DNR) and Luhansk People’s Republic (LNR) regions of Ukraine) or a license is required based on a limited sanction (Russia) unless a license exception or portion thereof is specifically listed in the license exceptions paragraph pertaining to a particular sanctioned country in part 746 of the EAR.
 * * * * *

■ 8. Section 740.19 is amended by revising paragraphs (a), (b) introductory text, and (c) to read as follows:

§ 740.19 Consumer Communications Devices (CCD).

(a) *Authorizations.* This section authorizes the export, reexport, or transfer (in-country) of commodities and software to Cuba and Russia subject to the requirements stated in this section. This section does not authorize U.S. owned or controlled entities in third countries to engage in reexports of foreign produced commodities to Cuba for which no license would be issued by the Department of the Treasury pursuant to 31 CFR 515.559.

(b) *Eligible commodities and software.* Commodities and software in paragraphs (b)(1) through (17) of this section are eligible for export, reexport, or transfer (in-country) under this section to and within Cuba and Russia.
 * * * * *

(c) *Eligible and ineligible end users—*
 (1) *Organizations.* (i) The license exception in this section may be used to export, reexport, or transfer (in-country) eligible commodities and software to

and for the use of independent non-governmental organizations in Cuba or Russia.

(ii) The Cuban Government, the Cuban Communist Party, the Russian Government, and organizations administered or controlled by the Cuban Government, the Cuban Communist Party, or the Russian Government are not eligible end users.

(iii) [Reserved]

(2) *Individuals*. The license exception in this section may be used to export, reexport or transfer (in-country) eligible commodities and software to and for the use of individuals other than the following:

(i) *Ineligible Cuban Government officials*. Ministers and Vice-Ministers; members of the Council of State; members of the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense

of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; or members and employees of the Supreme Court (Tribuno Supremo Nacional).

(ii) *Ineligible Cuban Communist Party officials*. Members of the Politburo.

(iii) *Ineligible Russian Government officials*. The President, Prime Minister, and Deputy Prime Ministers; Federal Ministers; Chairman, Deputy Chairman, and Secretary of the Security Council; members and employees of the Federal Assembly (the State Duma and the Federation Council); members and

employees of the Supreme Court and the Constitutional Court; Chief and all employees of the General Staff of the armed forces; employees of the Ministry of Defence; Director and employees of the Federal Security Service, Director and employees of the Foreign Intelligence Service; employees of the Ministry of the Interior; employees of state committees, chief editors, editors and deputy editors of Russian state-run media organizations and programs, including newspapers, television, and radio; offices, services, agencies and other entities organized under or reporting to the federal government.

■ 9. Supplement no. 1 to part 740 is amended by revising the entry for "Russia" and footnote 1 in the Country Group D table to read as follows:

Supplement No. 1 to Part 740—Country Groups

* * * * *

COUNTRY GROUP D

Country	[D:1] National security	[D:2] Nuclear	[D:3] Chemical & biological	[D:4] Missile technology	[D:5] U.S. arms embargoed countries ¹
Russia	X	X	X	X	X
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

¹ **Note to Country Group D:5:** Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the **Federal Register**. The list of arms embargoed destinations in this table is drawn from 22 CFR 126.1 and State Department **Federal Register** notices related to arms embargoes (compiled at www.pmddtc.state.gov/embargoed_countries/index.html) and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this table and the countries identified by the State Department as subject to a U.S. arms embargo (in the **Federal Register**), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

* * * * *

PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 10. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 10, 2021, 86 FR 62891 (November 12, 2021).

■ 11. Section 742.2 is amended by revising paragraph (b)(4) to read as follows:

§ 742.2 Proliferation of chemical and biological weapons.

* * * * *

(b) * * *

(4) License applications for items described in paragraph (a) of this section, when destined for the People's Republic of China will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7). When such items are destined to Russia, license applications will be reviewed under a policy of denial. However, exports and reexports of items to Russia in support of U.S.-Russia civil space cooperation activities will be reviewed on a case-by-case basis, as well as certain other certain specified activities specified in § 746.8 of the EAR. See § 746.8(b).

* * * * *

■ 12. Section 742.3 is amended by revising paragraph (b)(4) to read as follows:

§ 742.3 Nuclear nonproliferation.

* * * * *

(b) * * *

(4) License applications for items described in paragraph (a) of this section, when destined for the People's Republic of China will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7). When such items are destined to Russia, license applications will be reviewed under a policy of denial. However, exports and reexports of items to Russia in support of U.S.-Russia civil space cooperation activities will be reviewed on a case-by-case basis. See § 746.8(b) of the EAR.

* * * * *

■ 13. Section 742.4 is amended by revising paragraph (b)(7)(i) and adding paragraph (b)(9) to read as follows:

§ 742.4 National security.

* * * * *

(b) * * *

(7)(i) For Burma, Cambodia, the People's Republic of China (China), and Venezuela, all applications will be reviewed to determine the risk of diversion to a military end user or military end use. There is a general policy of approval for license applications to export, reexport, or transfer items determined to be for civil end users for civil end uses. There is a presumption of denial for license applications to export reexport, or transfer items that would make a material contribution to the "development," "production," maintenance, repair, or operation of weapons systems, subsystems, and assemblies, such as, but not limited to, those described in supplement no. 7 to this part, of Burma, Cambodia, China, or Venezuela.

* * * * *

(9) For the Russian Federation, all applications will be reviewed in accordance with the licensing policy set forth in § 746.8(b) of the EAR.

* * * * *

■ 14. Section 742.5 is amended by revising paragraph (b)(5) to read as follows:

§ 742.5 Missile technology.

* * * * *

(b) * * *

(5) License applications for items described in paragraph (a) of this section, when destined for the People's Republic of China, will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7). When such items are destined to Russia, license applications will be reviewed under a policy of denial. However, exports and reexports of items to Russia in support of U.S.-Russia civil space cooperation activities will be reviewed on a case-by-case basis. See § 746.8(b).

* * * * *

■ 15. Section 742.6 is amended by revising paragraph (b)(8) and adding paragraph (b)(9) to read as follows:

§ 742.6 Regional stability.

* * * * *

(b) * * *

(8) *China or Venezuela.* Applications to export or reexport items described in paragraph (a)(7) of this section to China or Venezuela will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of promoting the observance of human rights throughout the world. Such applications will also be reviewed consistent with

United States arms embargo policies in § 126.1 of the ITAR (22 CFR 126.1). When destined to China, items classified under any 9x515.y ECCN will be subject to a policy of denial consistent with paragraph (b)(1) of this section.

(9) *Russia.* Applications to export or reexport items described in paragraph (a)(7) of this section will be reviewed pursuant to the licensing policy set forth in § 746.8(b) of the EAR, as well as the foreign policy interest of promoting the observance of human rights throughout the world and consistent with United States arms embargo policies in § 126.1 of the ITAR (22 CFR 126.1).

* * * * *

PART 744—END USE AND END USER CONTROLS

■ 16. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 15, 2021, 86 FR 52069 (September 17, 2021); Notice of November 10, 2021, 86 FR 62891 (November 12, 2021).

■ 17. Section 744.21 is revised to read as follows:

§ 744.21 Restrictions on certain 'military end use' or 'military end user' in Burma, Cambodia, the People's Republic of China, the Russian Federation, or Venezuela.

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL) (supplement no. 1 to this part), you may not export, reexport, or transfer (in-country) any item subject to the EAR listed in supplement no. 2 to this part to Burma, Cambodia, the People's Republic of China (China), or Venezuela, or any item "subject to the EAR" except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian "government end users" and Russian state-owned enterprises (SoEs) to the Russian Federation, without a license if, at the time of the export, reexport, or transfer (in-country), you have "knowledge," as defined in § 772.1 of the EAR, that the item is intended, entirely or in part, for a 'military end use,' as defined in paragraph (f) of this section, or a 'military end user,' as

defined in paragraph (g) of this section, in Burma, Cambodia, China, the Russian Federation, or Venezuela.

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notification published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in Burma, Cambodia, China, the Russian Federation, or Venezuela. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. The absence of BIS notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(1) *'Military End-User' (MEU) List and Entity List.* BIS may inform and provide notice to the public that certain entities are subject to the additional prohibition described under this paragraph (b) following a determination by the End-User Review Committee (ERC) that a specific entity is a 'military end user' pursuant to this section and therefore any exports, reexports, or transfers (in-country) to that entity represent an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in Burma, Cambodia, China, the Russian Federation or Venezuela. Such entities in Burma, Cambodia, China, or Venezuela may be added to supplement no. 7 to this part—'Military End-User' (MEU) List. Such entities in the Russian Federation may be added to supplement No. 4 to this part—Entity List. License requirements for listed MEU are described in paragraph (b)(1)(ii) of this section. The listing of entities under supplement no. 7 or 4 to this part is not an exhaustive listing of 'military end users' for purposes of this section. Exporters, reexporters, and transferors are responsible for determining whether transactions with entities not listed on supplement no. 7 or 4 to this part are subject to a license requirement under paragraph (a) of this section. The process in this paragraph (b)(1) for placing entities on the MEU List and Entity List is only one method BIS may use to inform exporters, reexporters, and transferors of license requirements under this section.

(i) *End-User Review Committee (ERC)*. The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the MEU List and Entity List. Decisions by the ERC for purposes of the MEU List and Entity List will be made following the procedures identified in this section and in supplement no. 5 to this part—Procedures for End-User Review Committee Entity List and ‘Military End User’ (MEU) List Decisions.

(ii) *License requirement for parties to the transaction*. Consistent with paragraph (a) of this section, a license is required for the export, reexport, or transfer (in-country) of any item subject to the EAR listed in supplement no. 2 to this part when an entity that is listed on the MEU List under Burma, Cambodia, the People’s Republic of China (China), or Venezuela is a party to the transaction as described in § 748.5(c) through (f) of the EAR. Consistent with paragraph (a) of this section, a license is required for the export, reexport, or transfer (in-country) of any item subject to the EAR except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs) to Russia when an entity that is listed on the Entity List under Russia pursuant to this section is a party to the transaction as described in § 748.5(c) through (f) of the EAR.

(2) *Requests for removal from or modification of ‘Military End User’ (MEU) List and Entity List*. Any entity listed on the MEU List or Entity List pursuant to this section may request that its listing be removed or modified. All such requests, including reasons therefor, must be in writing and sent to: Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW, Room 3886, Washington, DC 20230; or by email at ERC@bis.doc.gov. In order for an entity listed on the MEU List or the Entity List pursuant to this section to petition BIS for their removal or modification, as applicable, the entity must address why the entity is not a ‘military end user’ for purposes of this section.

(i) *Review*. The ERC will review such requests for removal or modification in accordance with the procedures set forth in supplement no. 5 to this part.

(ii) *BIS action*. The Deputy Assistant Secretary for Export Administration will convey the decision on the request to

the requester in writing. That decision will be the final agency action on the request.

(c) *License exception*. Despite the prohibitions described in paragraphs (a) and (b) of this section, you may export, reexport, or transfer (in-country) items subject to the EAR under the provisions of License Exception GOV set forth in § 740.11(b)(2)(i) and (ii) of the EAR.

(d) *License application procedure*. When submitting a license application pursuant to this section, you must state in the “additional information” block of the application that “this application is submitted because of the license requirement in this section (Restrictions on a ‘Military End Use’ or ‘Military End User’ in Burma, Cambodia, the People’s Republic of China, the Russian Federation, or Venezuela).” In addition, either in the additional information block of the application or in an attachment to the application, you must include all known information concerning the ‘military end use’ and ‘military end user(s)’ of the item(s). If you submit an attachment with your license application, you must reference the attachment in the “additional information” block of the application.

(e) *License review standards*. (1) Applications to export, reexport, or transfer (in-country) items to or within Burma, Cambodia, the People’s Republic of China (China), or Venezuela described in paragraph (a) of this section will be reviewed with a presumption of denial. Applications to export, reexport, or transfer (in-country) items to or within Russia described in paragraph (a) of this section will be reviewed with a policy of denial.

(2) Applications may be reviewed under chemical and biological weapons, nuclear nonproliferation, or missile technology review policies, as set forth in §§ 742.2(b)(4), 742.3(b)(4), and 742.5(b)(4) of the EAR, if the end use may involve certain proliferation activities.

(3) Applications for items requiring a license for any reason that are destined to Burma, Cambodia, China, the Russian Federation, or Venezuela for a ‘military end use’ or ‘military end user’ also will be subject to the review policy stated in paragraph (e)(1) of this section.

(f) *Military end use*. In this section, ‘military end use’ means: Incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into items classified under Export Control Classification Numbers (ECCNs) ending in “A018” or under “600 series” ECCNs; or any item that supports or contributes to the operation, installation,

maintenance, repair, overhaul, refurbishing, “development,” or “production,” of military items described on the USML, or items classified under ECCNs ending in “A018” or under “600 series” ECCNs.

(g) *Military end user*. In this section, the term ‘military end user’ means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations (excluding those described in § 744.22(f)(2)), or any person or entity whose actions or functions are intended to support ‘military end uses’ as defined in paragraph (f) of this section.

(h) *Effects on contracts*. Transactions involving the export, reexport, or transfer (in country) of items to or within Venezuela are not subject to the provisions of this section if the contracts for such transactions were signed prior to November 7, 2014.

■ 18. Supplement No. 4 to part 744 is amended:

■ a. Under Russia:

■ i. By adding in alphabetical order entries for “Admiralty Shipyard JSC;” “Aleksandrov Scientific Research Technological Institute NITI;” “Argut OOO;” “Communication Center of the Ministry of Defence;” “Federal Research Center Borekov Institute of Catalysis;”

■ ii. By revising the entry for “Federal Security Service (FSB);”

■ iii. By adding in alphabetical order entries for “Federal State Budgetary Enterprise of the Administration of the President of Russia;” “Federal State Budgetary Enterprise Special Flight Unit Rossiya of the Administration of the President of Russia;” “Federal State Unitary Enterprise Dukhov Automatics Research Institute (VNIIA);” “Foreign Intelligence Service (SVR);” “Forensic Center of Nizhniy Novgorod Region Main Directorate of the Ministry of Interior Affairs;” “International Center for Quantum Optics and Quantum Technologies LLC;” “Irkut Corporation;” “Irkut Research and Production Corporation Public Joint Stock Company;” “Joint Stock Company Scientific Research Institute of Computing Machinery;” “JSC Central Research Institute of Machine Building (JSC TsNIIMash);” “JSC Kazan Helicopter Plant Repair Service;” “JSC Rocket and Space Centre—Progress;” “Kamensk-Uralsky Metallurgical Works J.S. Co.;” “Kazan Helicopter Plant PJSC;” “Komsomolsk-na-Amur Aviation Production Organization (KNAAPO);”

■ iv. By revising the entry for “Main Intelligence Directorate;” and

■ v. By adding in alphabetical order entries for “Ministry of Defence of the

Russian Federation;” “Moscow Institute of Physics and Technology;” “NPO High Precision Systems JSC;” “NPO Splyav JSC;” “Oboronprom OJSC;” “PJSC Beriev Aircraft Company;” “PJSC Irkut Corporation;” “PJSC Kazan Helicopters;” “POLYUS Research Institute of M.F. Stelmakh Joint Stock Company;” “Promtech-Dubna, JSC;” “Public Joint Stock Company United Aircraft Corporation;” “Radiotechnical

and Information Systems (RTI) Concern;” “Rapart Services LLC;” “Rosoboronexport OJSC (ROE);” “Rostec (Russian Technologies State Corporation);” “Rostekh—Azimuth;” “Russian Aircraft Corporation MiG;” “Russian Helicopters JSC;” “SP Kvant;” “Sukhoi Aviation JSC;” “Sukhoi Civil Aircraft;” “Tactical Missiles Corporation JSC;” “Tupolev JSC;” “UEC-Saturn;” “United Aircraft

Corporation;” “United Engine Corporation;” and “United Instrument Manufacturing Corporation”; and

■ b. By adding footnote 3.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	Federal Register citation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
RUSSIA	* * * * *	* * * * *	* * * * *	* * * * *
	Admiralty Shipyard JSC, 203, Fontanka Emb., 190121, St. Peterburg, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Aleksandrov Scientific Research Technological Institute NITI, Koporskoe Highway, House 72, Sosnovy Bor, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Argut OOO, 6 Mnevniki str end 6 fl, Moscow 123308, Russia.	All items subject to the EAR except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs) to Russia. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Communication Center of the Ministry of Defence, Bolshoi Znamenskiy per. 21, Moscow, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Federal Research Center Borekov Institute of Catalysis, pr. Lavrentieva 5, Novosibirsk 630090, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.

Country	Entity	License requirement	License review policy	Federal Register citation
	Federal Security Service (FSB), a.k.a., the following one alias: —Federalnaya Sluzhba Bezopasnosti. Ulitsa Kuznetskiy Most, Dom 22, Moscow 107031, Russia; <i>and</i> Lubyanskaya Ploschad, Dom 2, Moscow 107031, Russia.	All items subject to the EAR, apart from items that are related to transactions that are authorized by the Department of the Treasury's Office of Foreign Assets Control pursuant to General License No. 1B of March 2, 2021 and except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Presumption of denial	82 FR 724, 1/4/17. 82 FR 18219, 4/18/17. 86 FR 37903, 7/19/21. 87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	*	*	*	*
	Federal State Budgetary Enterprise of the Administration of the President of Russia, 1-ya Reysovaya Street, 1, Moscow 119027, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022].
	Federal State Budgetary Enterprise Special Flight Unit Rossiya of the Administration of the President of Russia, 1-ya Reysovaya Street, 1, Moscow 119027, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Federal State Unitary Enterprise Dukhov Automatics Research Institute (VNIIA), 22, Sushchevskaya Ul, Moscow 127055RU.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Foreign Intelligence Service (SVR), Yasenevo 11 Kolpachny, Moscow, 0101000.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Forensic Center of Nizhniy Novgorod Region Main Directorate of the Ministry of Interior Affairs, Gorkiy Street, 71, Nizhniy Novgorod 603950, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	*	*	*	*
	International Center for Quantum Optics and Quantum Technologies LLC, a.k.a. the following two aliases: —Russian Quantum Center <i>and</i> —RQC. Business-center "Ural," 100 Novaya Street, Skolkovo, Moscow, 143025, Russia; <i>and</i> 30 Bolshoy Blvd., Bldg. 1, Moscow, 121205, Russia; <i>and</i> 100A Novaya Street, Skolkovo, Odintsovsky District, Moscow, 143025, Russia.	All items subject to the EAR except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian "government end users" and Russian state-owned enterprises (SoEs) to Russia. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Irkut Corporation, Leningradsky Prospect 68, Moscow 125315, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Irkut Research and Production Corporation Public Joint Stock Company, 68 Leningradsky Prospect, Moscow 125315, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * Joint Stock Company Scientific Research Institute of Computing Machinery, Melnichnaya Street, 31, Kirov 610025, Russia.	* * All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	* * Policy of denial. See §§ 746.8(b) and 744.21(e).	* * 87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * JSC Central Research Institute of Machine Building (JSC TsNIIMash), Pionerskaya Street, 4, korpus 22, Moskovskaya obl., Korolov 141070, Russia.	* * All items subject to the EAR except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs) to Russia. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR) This license requirement may be overcome by License Exception GOV under § 740.11(b)(2) and (e)	* * Policy of denial. See §§ 746.8(b) and 744.21(e).	* * 87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * JSC Kazan Helicopter Plant Repair Service, a.k.a., the following two aliases: —Kazanski Vertoletny Zavod Remservis; and —KVZ Remservis. Ulitsa Tetsevsckaya 14, Kazan, Russia.	* * All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	* * Policy of denial. See §§ 746.8(b) and 744.21(e).	* * 87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * JSC Rocket and Space Centre— Progress, Zemetsa Street 18, Samarskaya Oblast, Samara 443009, Russia.	* * All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR) This license requirement may be overcome by License Exception GOV under § 740.11(b)(2) and (e)	* * Policy of denial. See §§ 746.8(b) and 744.21(e).	* * 87 FR [INSERT FR PAGE NUMBER], 3/3/2022.

Country	Entity	License requirement	License review policy	Federal Register citation
	Kamensk-Uralsky Metallurgical Works J.S. Co., 5 Zavodskaya St., Kamensk Uralsky, 623405 Sverdlovsk region, Russia.	All items subject to the EAR except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs) to Russia. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Kazan Helicopter Plant PJSC, Tsetsevskaya St, Kazan 420085, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Komsomolsk-na-Amur Aviation Production Organization (KNAAPO), 1 Sovetskaya Street, Komsomolsk-on-Amur, Khabarovsk Krai, Russia 618018.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Main Intelligence Directorate, a.k.a., the following three aliases —Glavnoe Razvedyvatel’noe Upravlenie; —GRU; <i>and</i> —Main Intelligence Department. Khoroshevskoye Shosse 76, Khodinka, Moscow, Russia; <i>and</i> Ministry of Defence of the Russian Federation, Frunzenskaya nab., 22/2, Moscow 119160, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Presumption of denial	82 FR 724, 1/4/17. 87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Ministry of Defence of the Russian Federation, including the Armed Forces of Russia and all operating units wherever located. This includes the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations of the Russian Federation. All address located in Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR) The license requirements under this entry also extend to any export, reexport and transfer (in-country) to the entity wherever located worldwide.	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Moscow Institute of Physics and Technology, a.k.a., the following two aliases: —MIPT; <i>and</i> —MFTI. Dolgoprudny Campus: 9 Institutskiy per., Dolgoprudny, Moscow Region 141701, Russia; <i>and</i> Zhukovsky Campus: Ulitsa Gagarina 16, Zhukovsky, Moscow Region 140180, Russia; <i>and</i> Moscow Campus 1 Stroyeniye 1, Klimentovskiy Pereulok, Moscow Region 115184, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.

Country	Entity	License requirement	License review policy	Federal Register citation
	NPO High Precision Systems JSC, Kievskaya Street 7, Moscow, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	NPO Splav JSC, 33 ul. Shcheglov Kaya Zaseka Tula, 300004 Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * Oboronprom OJSC, 29/141 Vereiskaya Street, Moscow, 121357 Russia.	* * All items subject to the EAR except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs) to Russia. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	* * Policy of denial. See §§ 746.8(b) and 744.21(e).	* * 87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * PJSC Beriev Aircraft Company, 1 Aviatorov Square, Taganrog 347923, Russia.	* * All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	* * Policy of denial. See §§ 746.8(b) and 744.21(e).	* * 87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	PJSC Irkut Corporation, Regional Aircraft 26 Leninskaya Sloboda, Moscow 115280, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	PJSC Kazan Helicopters, Tetsevsкая Street, 14, Kazan, Tatarstan Republic 420085, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * POLYUS Research Institute of M.F. Stelmakh Joint Stock Company, Building 1, 3 Vvedenskogo Street, Moscow, 117342, Russia.	* * All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	* * Policy of denial. §§ 746.8(b) and 744.21(e).	* * 87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * Promtech-Dubna, JSC, Programmistov St., 4, Room 364, Dubna, Moscow 141983, Russia.	* * All items subject to the EAR except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs) to Russia. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	* * Policy of denial. See §§ 746.8(b) and 744.21(e).	* * 87 FR [INSERT FR PAGE NUMBER], 3/3/2022.

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
	Public Joint Stock Company United Aircraft Corporation, Bolshaya Pionerskaya, Moscow 115054, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
*	*	*	*	*
	Radiotechnical and Information Systems (RTI) Concern, 127083, Moscow, 8 marta, 10/1 Russia.	All items subject to the EAR except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian "government end users" and Russian state-owned enterprises (SoEs) to Russia. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
*	*	*	*	*
	Rapart Services LLC, Aeroportovskaya Str. 6/2, Solnechnogorskiy Region, Dubrobki 141580, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
*	*	*	*	*
	Rosoboronexport OJSC (ROE), Strada Strominka 27, Moscow, 107076 Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
*	*	*	*	*
	Rostec (Russian Technologies State Corporation), 24 Usacheva Street, Moscow, Russia 119048.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
*	*	*	*	*
	Rostekh—Azimuth, Building 2, 5 Suite X, Room 15, Floor 2, Narishkinskaya Alleya, Moscow 125167, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
*	*	*	*	*
	Russian Aircraft Corporation MiG, Leningradskoe Highway, 6, Building 1, Moscow, 125171, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
*	*	*	*	*
	Russian Helicopters JSC, Bolshaya Pionerskaya, 1, Moscow, 123610, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
*	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register citation
	SP Kvant, a.k.a., the follow three aliases: —Kvant LLC; —Limited Liability Company Joint Venture Quantum Technologies; <i>and</i> —Joint Venture Quantum. D. 46, Etazh 6, pom. 600K, Shosse Varshavskoe, Moscow, 115230, Russia.	All items subject to the EAR except for food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs) to Russia. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * * * *	* * * * *	* * * * *	* * * * *
	Sukhoi Aviation JSC, Polikarpov Str., 23B, Moscow, 125284, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	Sukhoi Civil Aircraft, 1 Sovetskaya Street, Komsomolsk-On-Amur 681018, Russia; <i>and</i> 15 Tupoleva Street, OP JSC SCA, Zukhovskiy 140180, Russia; <i>and</i> 23b Bld. 2 Polikarpova St., Moscow 125824, Russia; <i>and</i> 26, Bld. 5, Leninskaya Sloboda Street, Moscow, 115280, Russia; <i>and</i> Antonova Avenue 1, Ulianovsk 432072, Russia; <i>and</i> Leningradskaya Street 80/4A, Komsomolsk-On-Amur 681007, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * * * *	* * * * *	* * * * *	* * * * *
	Tactical Missiles Corporation JSC, Korolevlyicha Street, 7, 141080, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * * * *	* * * * *	* * * * *	* * * * *
	Tupolev JSC, Academician Tupolev Embankment 17, Moscow, 105005, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	UEC-Saturn, 163 Lenin Avenue, Rybinsk 152903, Yavoslavl Region, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	* * * * *	* * * * *	* * * * *	* * * * *
	United Aircraft Corporation, Bolshaya Pionerskaya Str., 1, Moscow, 115054, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.

Country	Entity	License requirement	License review policy	Federal Register citation
	United Engine Corporation, 16, Budyonny Avenue, Moscow, 105118 Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
	United Instrument Manufacturing Corporation, Vereiskaya 29, str. 141, Moscow, Russia.	All items subject to the EAR except for food or medicine designated as EAR99. (See §§ 734.9(g), ³ 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
*	*	*	*	*
*	*	*	*	*

³For this entity, “items subject to the EAR” includes foreign-produced items that are subject to the EAR under § 734.9(g) of the EAR. See §§ 746.8 and 744.21 of the EAR for related license requirements, license review policy, and restrictions on license exceptions.

Supplement No. 7 to Part 744 [Amended]

■ 19. Supplement No. 7 to part 744 is amended by removing RUSSIA and all the Russian entries.

PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS

■ 20. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 2151 note; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 6, 2021, 86 FR 26793 (May 10, 2021).

■ 21. Section 746.5 is amended by revising paragraph (a)(1) to read as follows:

§ 746.5 Russian industry sector sanctions.

(a) * * *
 (1) *General prohibition.* (i) A license is required to export, reexport or transfer (in-country) any item subject to the Export Administration Regulations (EAR) listed in supplement No. 2 to this part and items specified in ECCNs 0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999 when you know that the item will be used directly or indirectly in exploration for, or production of, oil or gas in Russian deepwater (greater than 500 feet) or Arctic offshore locations or shale formations in Russia, or are unable to

determine whether the item will be used in such projects. Such items include, but are not limited to, drilling rigs, parts for horizontal drilling, drilling and completion equipment, subsea processing equipment, Arctic-capable marine equipment, wireline and down hole motors and equipment, drill pipe and casing, software for hydraulic fracturing, high pressure pumps, seismic acquisition equipment, remotely operated vehicles, compressors, expanders, valves, and risers.

(ii) You should be aware that other provisions of the EAR, including parts 742 and 744 and § 746.8, also apply to exports and reexports to Russia. License applications submitted to BIS under this section may include the phrase “section 746.5” or in Block 9 (Special Purpose) as described in Supplement No. 1 to part 748 of the EAR.

* * * * *

■ 22. Section 746.6 is revised to read as follows:

§ 746.6 Crimea Region of Ukraine and Covered Regions of Ukraine.

(a) *License requirements—(1) General prohibition—Crimea.* A license is required to export or reexport to or transfer within the Crimea region of Ukraine any item subject to the EAR other than food and medicine designated as EAR99, or ‘software necessary to enable the exchange of personal communications over the internet’.

(2) *General prohibition—Donetsk People’s Republic (DNR) and Luhansk People’s Republic (LNR).* A license is required to export or reexport to, or transfer within, the so-called DNR or LNR regions of Ukraine any item subject to the EAR other than: Food and

medicine designated as EAR99, or ‘software necessary to enable the exchange of personal communications over the internet’.

(3) *Deemed exports or reexports.* For purposes of applying the EAR deemed export and deemed reexport requirements pursuant to the general prohibitions described in this paragraph (a)(3), the nationality of the foreign national (as determined by accepted methods, such as looking to the passport or other nationality document(s) recognized by the United States Government) is what is used for purposes of determining whether a license is required for a deemed export or deemed reexport.

(b) *License review policy.* Applications will be reviewed with a policy of denial, except for applications for transactions authorized under OFAC Ukraine-Related General Licenses, which will be reviewed on a case-by-case basis.

(c) *License exceptions.* You may export, reexport or transfer (in-country) without a license if your transaction meets all the applicable terms and conditions of any of the license exception paragraphs specified in this paragraph (c). To determine scope and eligibility requirements, you will need to refer to the sections or specific paragraphs of part 740 (License Exceptions) of the EAR, as well as § 740.2 license exception restrictions. Read each license exception carefully, as the provisions available for countries subject to sanctions are generally narrow.

(1) TMP for items for use by the news media as set forth in § 740.9(a)(9) of the EAR.

(2) GOV for items for personal or official use by personnel and agencies of the U.S. Government, the International Atomic Energy Agency (IAEA), or the European Atomic Energy Community (Euratom) as set forth in § 740.11(a) and (b)(2) of the EAR.

(3) GFT for gift parcels and humanitarian donations as set forth in § 740.12 of the EAR.

(4) TSU for operation technology and software for lawfully exported commodities as set forth in § 740.13(a) and sales technology as set forth in § 740.13 (b) of the EAR.

(5) BAG for exports of items by individuals leaving the United States as personal baggage as set forth in § 740.14(a) through (d) of the EAR.

(6) AVS for civil aircraft and vessels as set forth in § 740.15(a)(4) and (d) of the EAR.

(d) *Definitions.* For purpose of this section, use the following definitions of terms:

(1) ‘Crimea region of Ukraine’ includes the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on occupation of that land territory.

(2) ‘Donetsk People’s Republic (DNR) region’ or ‘Luhansk People’s Republic (LNR) region’ include the land territory in those regions as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported sovereignty over that land territory or area.

(3) ‘Software necessary to enable the exchange of personal communications over the internet’ includes only software (such as software for instant messaging, chat and email, social networking, sharing of photos and movies, Web browsing, and blogging), designated EAR99 or classified as mass market software under Export Control Classification Number (ECCN) 5D992.c of the EAR, provided that such software is widely available to the public at no cost to the user.

■ 23. Section 746.8 is added to read as follows:

§ 746.8 Sanctions against Russia.

(a) *License requirements*—(1) *Items classified in any ECCN in CCL Categories 3 to 9.* In addition to license requirements specified on the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR and in other provisions of the EAR, including part 744 and § 746.5, a license is required, excluding deemed exports and deemed reexports, to export, reexport, or transfer (in-country) to or within Russia any item subject to the EAR and specified in any Export

Control Classification Number (ECCN) in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL.

(2) *Foreign-produced “direct product” items subject to the EAR under Russia foreign “direct product” (FDP) rule.*

Except as described in paragraph (a)(4) of this section, a license is required to reexport, export from abroad, or transfer (in-country) to any destination any foreign-produced item subject to the EAR under the Russia FDP Rule described in § 734.9(f) of the EAR.

(3) *Foreign-produced “direct product” items subject to the EAR under Russia-Military End User FDP rule.* Except as described in paragraph (a)(4) of this section, a license is required to reexport, export from abroad, or transfer (in-country) to or within any destination any foreign-produced item subject to the EAR under § 734.9(g) of the EAR other than food or medicine designated as EAR99, or ECCN 5A992.c and 5D992.c unless for Russian “government end users” and Russian state-owned enterprises (SoEs).

(4) *Exclusion from license requirements under paragraphs (a)(2) and (3) of this section.* The countries listed in supplement No. 3 to this part have committed to implementing substantially similar export controls on Russia under their domestic laws. Therefore, exports or reexports from the countries described in this supplement No. 3 to this part or transfers (in-country) within the countries described in this supplement are not subject to the license requirements described in paragraphs (a)(2) and (3) of this section, unless a limit to the exclusion is described in the Scope column in supplement No. 3 to this part.

(5) *Exclusion from scope of U.S.-origin controlled content under paragraph (a)(1) of this section.* For purposes of determining U.S.-origin controlled content under supplement No. 2 to part 734 of the EAR, paragraph (a)(1) of this section when making a *de minimis* calculation for reexports and exports from abroad to Russia, the license requirements in paragraph (a)(1) of this section are not used to determine controlled U.S.-origin content in a foreign-made item, provided the criteria in paragraphs (a)(5)(i) and (ii) of this section are met:

(i) The U.S.-origin content is described in an Anti-Terrorism (AT)-only ECCN and is not otherwise excluded from the applicable Scope column in supplement No. 3 to this part. For purposes of this paragraph (a)(5), AT-only items means any ECCN that only specifies either only AT in the reason for control paragraph of the

ECCN or is classified under ECCN 9A991; and

(ii) The foreign made item will be reexported or exported from abroad from a country described in supplement No. 3 to this part.

Note 1 to paragraph (a). A ‘military end user’ for purposes of paragraph (a)(3) and (4) of this section is any entity listed on the Entity List in supplement No. 4 to part 744 of the EAR under Russia with a footnote 3 designation.

(b) *Licensing policy.* With limited exceptions, applications for the export, reexport or transfer (in-country) of any item that requires a license for export or reexport to or transfer pursuant to the requirements of this section will be reviewed with a policy of denial. The following types of license applications for licenses required under paragraphs (a)(1) and (2) of this section will be reviewed on a case-by-case basis to determine whether the transaction in question would benefit the Russian government or defense sector: Applications related to safety of flight; applications related to maritime safety; applications to meet humanitarian needs; applications that support government space cooperation; applications for items destined to wholly-owned U.S. subsidiaries, foreign subsidiaries of U.S. companies that are joint ventures with other U.S. companies, joint ventures of U.S. companies with companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740 of the EAR countries, the wholly-owned subsidiaries of companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740, joint ventures of companies headquartered in Country Groups A:5 and A:6 with other companies headquartered in Country Groups A:5 and A:6; applications for companies headquartered in Country Groups A:5 and A:6 to support civil telecommunications infrastructure; and government-to-government activities. License applications required under paragraph (a)(3) of this section will be reviewed under a policy of denial in all cases.

(c) *License exceptions.* No license exceptions may overcome the license requirements in paragraph (a)(3) of this section, except as specified in the Entity List entry for a Footnote 3 entity on the Entity List in supplement no. 4 to part 744 of the EAR. No license exceptions may overcome the license requirements in paragraphs (a)(1) and (2) of this section except the following license

exceptions identified in paragraphs (c)(1) through (7) of this section.

(1) License Exception TMP for items for use by the news media as set forth in § 740.9(a)(9) of the EAR.

(2) License Exception GOV (§ 740.11(b) of the EAR).

(3) License Exception TSU for software updates for civil end-users that are wholly-owned U.S. subsidiaries, foreign subsidiaries of U.S. companies that are joint ventures with other U.S. and companies, joint ventures of U.S. companies with companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740 of the EAR countries, the wholly-owned subsidiaries of companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740, or joint ventures of companies headquartered in Country Group A:5 and A:6 with other companies headquartered in Country

Groups A:5 and A:6 (§ 740.13(c) of the EAR).

(4) License Exception BAG, excluding firearms and ammunition (§ 740.14, excluding paragraph (e), of the EAR).

(5) License Exception AVS (§ 740.15(a) and (b) of the EAR).

(6) License Exception ENC excluding Russian “government end users” and Russian state-owned enterprises (SoEs) (§ 740.17 of the EAR).

(7) License Exception CCD (§ 740.19 of the EAR).

■ 24. Supplement No. 2 to part 746 is amended by revising the introductory text of the supplement to read as follows:

Supplement No. 2 to Part 746—Russian Industry Sector Sanction List

The source for the Schedule B numbers and descriptions in this list comes from the Bureau of the Census’s Schedule B concordance of exports 2022. Census’s Schedule B List 2022 can be found at www.census.gov/foreign-trade/aes/documentlibrary/#concordance. The

Introduction Chapter of the Schedule B provides important information about classifying products and interpretations of the Schedule B, e.g., NESOI means Not Elsewhere Specified or Included. In addition, important information about products within a particular chapter may be found at the beginning of chapters.

* * * * *

■ 25. Add Supplement No. 3 to part 746 to read as follows:

Supplement No. 3 to Part 746—Countries Excluded From Certain License Requirements of § 746.8

Countries listed in this supplement No. 3 have committed to implementing substantially similar export controls on Russia under their domestic laws and are consequently excluded from certain requirements in § 746.8 of the EAR, as described in § 746.8(a)(4) and (5). The Scope column of the following table identifies whether the country receives a full or partial exclusion. For countries with partial exclusions, the items for which such exclusions apply are listed in the Scope column.

Country	Scope	Federal Register citation
Australia	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Austria	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Belgium	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Bulgaria	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Canada	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Croatia	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Cyprus	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Czech Republic	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Denmark	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Estonia	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Finland	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
France	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Germany	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Greece	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Hungary	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Ireland	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Italy	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Japan	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Latvia	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Lithuania	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Luxembourg	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Malta	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Netherlands	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
New Zealand	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Poland	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Portugal	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Romania	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Slovakia	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Slovenia	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Spain	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
Sweden	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.
United Kingdom	Full	87 FR [INSERT FR PAGE NUMBER], 3/3/2022.

PART 772—[AMENDED]

■ 26. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 27. Section 772.1 is amended by revising the definition of “Food” to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Food. Specific to exports and reexports to North Korea, Syria, Crimea region of Ukraine, and the so-called Donetsk People’s Republic and Luhansk People’s Republic regions of Ukraine, food means items that are consumed by and provide nutrition to humans and animals, and seeds, with the exception

of castor bean seeds, that germinate into items that will be consumed by and provide nutrition to humans and

animals. (Food does not include alcoholic beverages.)

* * * * *

Thea D. Rozman Kendler,
Assistant Secretary for Export Administration.

[FR Doc. 2022-04300 Filed 2-24-22; 3:10 pm]

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Part III

Nuclear Regulatory Commission

10 CFR Parts 20, 26, 50, et al.

Regulatory Improvements for Production and Utilization Facilities
Transitioning to Decommissioning; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 26, 50, 51, 52, 72, 73, 140

[NRC–2015–0070]

RIN 3150–AJ59

Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that relate to the decommissioning of production and utilization facilities. The NRC's goals in amending these regulations are to maintain a safe, effective, and efficient decommissioning process; reduce the need for license amendment requests and exemptions from existing regulations; address other decommissioning issues deemed relevant by the NRC; and support the NRC's Principles of Good Regulation, including openness, clarity, and reliability. The NRC will hold a public meeting to promote full understanding of this proposed rule and to facilitate public comments.

DATES: Submit comments by May 17, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by the following method (unless this document describes a different method for submitting comments on a specific subject); 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–2015–0070. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: Dawn.Forder@nrc.gov. For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications 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:

Daniel I. Doyle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3748; email: Daniel.Doyle@nrc.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

A. Need for the Regulatory Action

The NRC is proposing to amend its regulations related to the decommissioning of production and utilization facilities. The Commission directed the NRC staff to proceed with an integrated rulemaking on nuclear power reactor decommissioning to address the following: A graded approach to emergency preparedness (EP), lessons learned from the licensees that have already gone through (or are currently going through) the decommissioning process, the advisability of requiring a licensee's post-shutdown decommissioning activities report (PSDAR) to be approved by the NRC, the appropriateness of maintaining the three existing options for decommissioning and the timeframes associated with those options, the appropriate role of State and local governments and non-governmental stakeholders in the decommissioning process, and any other issues deemed relevant by the NRC staff.

Compared to an operating nuclear power reactor, the risk of an offsite radiological release is significantly lower, and the types of possible accidents are significantly fewer, at a nuclear power reactor that has permanently ceased operations and removed fuel from the reactor vessel. As a direct result, there is no need for the NRC to impose new requirements in the areas identified in this rulemaking to address safety or security concerns. Instead, the requirements in decommissioning should be aligned with the reduction in risk that occurs over time, while maintaining safety and security. The decommissioning process can be improved and made more efficient, open, and predictable by reducing the reliance on licensing actions (*i.e.*, license amendment and exemption requests) that reflect this reduction in risk to achieve a sustainable regulatory framework during decommissioning.

The NRC has also determined that changes to the regulations are appropriate with respect to drug and alcohol testing; cyber security; and foreign ownership, control, or domination of a production or utilization facility undergoing decommissioning.

In several areas, the current regulations do not distinguish between provisions that apply to a nuclear power reactor that has permanently ceased operations and provisions that apply to an operating nuclear power reactor. To address this, the NRC is proposing to amend its regulations in several areas to provide a regulatory framework for the transition from operating to decommissioning. This proposed rule is a four-step graded approach that is commensurate with the reduction in radiological risk at four levels of decommissioning: (1) Permanent cessation of operations and permanent removal of all fuel from the reactor vessel, (2) sufficient decay of fuel in the spent fuel pool (SFP) such that it would not reach ignition temperature within 10 hours under adiabatic heatup conditions (*i.e.*, a complete loss of SFP water inventory with no heat loss), (3) transfer of all fuel to dry storage, and (4) removal of all fuel from the site. The graded approach is a fundamental concept for this proposed rule.

Because the current regulatory framework for decommissioning is adequate to protect public health and safety and the common defense and security, many of the new requirements in this proposed rule are alternatives to current requirements.

B. Major Provisions

Major provisions of this proposed rule include changes in the following areas:

- *Emergency preparedness.* This proposed rule offers an alternative, graded approach to the current requirements for onsite and offsite radiological emergency preparedness at a nuclear power reactor. This approach would provide four levels of emergency planning standards that coincide with significant milestones in decommissioning that reflect the gradual reduction of the radiological risk during decommissioning.
- *Physical security.* This proposed rule would make certain changes that would apply once a nuclear power reactor enters decommissioning. These proposed changes would (1) permit a certified fuel handler (CFH) to approve the temporary suspension of security measures during certain emergency conditions or during severe weather, (2) remove the requirement that a licensee's physical protection program be

designed to prevent significant core damage, (3) remove the requirement that a licensee must designate the reactor control room as a “vital area,” and (4) replace the requirement for maintaining continuous communications between the alarm stations and the control room with a requirement for maintaining communications between alarm stations and the CFH or senior on shift licensee representative, or both. This last change would clarify the management role of the CFH in a manner that is consistent with § 50.54(y) of title 10 of the *Code of Federal Regulations* (10 CFR). The NRC is also proposing to revise § 50.54(p) to add definitions for “change” and “decrease in safeguards effectiveness,” as those terms apply to the process for making changes to the security plans of licensees under 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities,” and 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” with operating, decommissioning, or decommissioned reactor units. In addition, this proposed rule would provide an option for a licensee to protect a general license independent spent fuel storage installation (ISFSI) under the physical security requirements in § 73.51, “Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste,” for a specific license ISFSI instead of the physical security requirements in § 73.55, “Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,” for a nuclear power reactor once all spent fuel has been moved to dry storage.

- *Cyber security.* This proposed rule would provide that the cyber security requirements in § 73.54, “Protection of digital computer and communication systems and networks,” continue to apply to a nuclear power reactor after the licensee’s permanent cessation of operations, until all the fuel has been removed from the reactor vessel and there has been sufficient decay of the fuel in the SFP such that it would not reach ignition temperature within 10 hours under adiabatic heatup conditions, at which point no digital computer and communications systems would be required to meet the criteria of § 73.54. This proposed rule would also provide for the removal of the cyber security license condition for 10 CFR part 50 nuclear power reactor licensees after the spent fuel decay period.

- *Drug and alcohol testing.* This proposed rule would correct inconsistencies in the NRC’s regulations for fitness-for-duty (FFD) programs and clarify provisions regarding a nuclear

power reactor licensee’s insider mitigation program (IMP).

- *Certified fuel handler definition and elimination of the shift technical advisor.* This proposed rule would retain the existing definition for “certified fuel handler” and add an alternative that would eliminate the need for nuclear power reactor licensees to seek the Commission’s approval of a fuel handler training program. The proposed provision would require the training program to address the safe conduct of decommissioning activities, safe handling and storage of spent fuel, and appropriate response to plant emergencies. The proposed alternative specifies that a CFH must be qualified in accordance with a fuel handler training program that meets the same requirements as training programs for non-licensed operators required by § 50.120, “Training and qualification of nuclear power plant personnel.” This proposed rule would also clarify that a Shift Technical Advisor (STA) is not required for decommissioning nuclear power reactors.

- *Decommissioning funding assurance.* This proposed rule recommends several changes regarding decommissioning funding for nuclear power reactors. It would modify the reporting frequency in § 50.75 to be consistent with the decommissioning funding assurance reporting frequency for ISFSIs in § 72.30(c). For ISFSI funding reports, this proposed rule would allow licensees to combine the reports that are required by § 50.82(a)(8)(v), § 50.82(a)(8)(vii), and § 72.30 and remove the requirement for NRC approval of ISFSI reports filed under § 72.30(c). It also would clarify that although the regulations establish a continuing obligation to provide reasonable assurance of decommissioning funding, when a licensee identifies a shortfall in the report required by § 50.75(f)(1), the licensee must obtain additional financial assurance to cover the shortfall and discuss that information in the next report. In addition, this proposed rule would make administrative changes to ensure consistency with § 50.4, “Written communications,” regarding the submission of notifications and to eliminate § 50.75(f)(2) because § 50.75(f)(1) fully encompasses paragraph (f)(2). Besides proposing conforming changes to 10 CFR part 52, the NRC is asking whether the NRC should maintain identical requirements in § 52.110 and § 50.82.

- *Offsite and onsite financial protection requirements and indemnity agreements.* This proposed rule would allow certain nuclear power reactor

licensees in decommissioning to reduce the insurance amounts that they are required to maintain without obtaining exemptions from the NRC’s regulations.

- *Environmental considerations.* This proposed rule would clarify that licensees must evaluate the environmental impacts of decommissioning and whether they are bounded by previous environmental reviews in the PSDAR. The proposed rule would also clarify environmental reporting requirements.

- *Record retention requirements.* This proposed rule would remove certain record retention requirements for structures, systems, and components (SSCs) that no longer remain in service during decommissioning and would remove requirements to keep multiple copies of certain spent fuel storage records. The NRC is also asking a specific question concerning the recordkeeping requirements for facilities licensed under 10 CFR part 52.

- *Low-level waste transportation.* This proposed rule would allow a 45-day window for notification of receipt of shipments of low-level radioactive waste (LLW). This increase from the current 20-day notification window is based on operating experience that shows that 45 days is an appropriate amount of time for notification of LLW shipments.

- *Spent fuel management planning.* This proposed rule would clarify requirements that the decommissioning documents contain information on spent fuel management planning in accordance with the regulatory requirements in § 72.218, “Termination of licenses.”

- *Backfit rule.* This proposed rule would clarify how the NRC applies § 50.109, “Backfitting,” to nuclear power reactor licensees in decommissioning and would make conforming changes to § 72.62.

- *Foreign ownership, control, or domination.* This proposed rule would specify the criteria for when a facility is no longer a production or utilization facility and that the foreign ownership, control, or domination (FOCD) prohibition found in § 50.38, “Ineligibility of certain applicants,” no longer applies to a person seeking a license for such a facility.

- *Clarification of scope of license termination plan requirement.* This proposed rule would clarify that the requirement for a license termination plan in §§ 50.82(a)(9) and 52.110(i) applies only to nuclear power reactor licensees that have loaded fuel into the reactor.

- *Removal of license conditions and withdrawal of orders made redundant*

by regulation. This proposed rule would deem removed conditions imposed upon individual licensees and withdraw NRC orders that have been identified as having been made redundant by subsequent regulation resulting in their requirements being generically applicable. License conditions deemed removed would be actually removed by administrative license amendment subsequent to the effective date of the final rule. The NRC is interested in obtaining stakeholder input to identify potential redundant requirements not listed in this proposed rule.

- *Changes for consistent treatment of holders of combined licenses and operating licenses.* The proposed rule would improve consistency in regulatory treatment for combined license (part 52) and operating license (part 50) holders by aligning regulatory

applicabilities for combined license holders upon submittal of the § 52.110(a) certifications with regulatory applicabilities for operating license holders upon submittal of the § 50.82(a)(1) certifications.

C. Costs and Benefits

The NRC prepared a draft regulatory analysis to determine the expected quantitative costs and benefits of this proposed rule, as well as qualitative factors to be considered in the NRC’s rulemaking decision. The conclusion of the analysis is that this proposed rule would result in net savings to production and utilization facility licensees and the NRC. The analysis combines the costs and benefits from the decommissioning areas of EP, physical security, cyber security, drug and alcohol testing, CFH training,

decommissioning funding assurance, offsite and onsite financial protection requirements and indemnity agreements, environmental considerations, records retention, low-level waste transportation, spent fuel management planning, application of the Backfit Rule, FOCD, and clarification of the scope of a license termination plan. The analysis discusses the economic impact to the nuclear industry, government, and society from the rulemaking and associated guidance.

The draft regulatory analysis discusses the cost benefit analysis for the various alternatives of each area of decommissioning proposed by the NRC, and shows that the NRC’s proposed rule and guidance development is overall cost beneficial to the nuclear industry, government, and society as shown in Table 1.

TABLE 1—SUMMARY OF COSTS AND BENEFITS (7% NPV)

Benefits	Costs	Net benefit
\$18,315,000	\$(401,000)	\$17,914,000

The draft regulatory analysis also considers, in a qualitative fashion, regulatory efficiency, public health and safety, and common defense and security. For the regulatory efficiency aspect, this proposed rule would enable the NRC to better maintain and administer regulatory activities over the decommissioning process and ensure that the requirements for decommissioning production and utilization facilities are clear and appropriate. This proposed rule would also continue to provide reasonable assurance of adequate protection of the public health and safety and promote the common defense and security and protect the environment at production and utilization facility sites that have started decommissioning.

Based on these quantitative and qualitative factors, the draft regulatory analysis concludes that the proposed rule should be adopted. For more information, please see the draft regulatory analysis available at the NRC’s Agencywide Documents Access and Management System (ADAMS) under Accession No. ML22019A132.

Table of Contents

- I. Obtaining Information and Submitting Comments
 - A. Obtaining Information
 - B. Submitting Comments
- II. Background
 - A. 1988 Decommissioning Rule
 - B. 1996 Decommissioning Rule

- C. Post-1996 Final Rule Decommissioning Activity
- D. Spent Fuel Pool Studies
- E. Changes in Nuclear Power Reactor Decommissioning at the NRC and Within the Nuclear Power Industry
- F. Decommissioning Lessons Learned Report
- G. Initiation of This Proposed Rule
- H. Advance Notice of Proposed Rulemaking
- I. Regulatory Basis
- III. Discussion
 - A. Current Regulatory Process
 - B. Objectives of This Proposed Rule
 - C. Applicability
 - D. Applicability to NRC Licensees During Operations
 - E. Applicability to ISFSI-Only and Standalone ISFSI/Decommissioned Reactor Sites
 - F. Graded Approach
 - G. Technical Basis for Graded Approach
 - H. Levels of Decommissioning
 - 1. Level 1
 - 2. Level 2
 - 3. Level 3
 - 4. Level 4
- IV. Scope of the Proposal
 - A. Emergency Preparedness
 - 1. Introduction
 - 2. Graded Approach for Emergency Preparedness
 - 3. Licensee Supporting Analyses
 - 4. Post-Shutdown Emergency Plans
 - 5. Permanently Defueled Emergency Plans
 - 6. Independent Spent Fuel Storage Installation-Only Emergency Plans
 - 7. All Spent Fuel Removed From Site
 - 8. Changes to Emergency Plans
 - 9. Program Element Review Under § 50.54(t)

- 10. Reasonable Assurance and Offsite Radiological Emergency Preparedness
- 11. Clean-up of Regulations
- 12. Revisions to § 72.32
- B. Physical Security
 - 1. Security Plans
 - 2. Dry Cask Storage
 - 3. Significant Core Damage
 - 4. Vital Areas
 - 5. Communications
 - 6. Suspension of Security Measures
- C. Cyber Security
- D. Drug and Alcohol Testing
 - 1. Scope of 10 CFR Part 26
 - 2. Fitness-for-Duty Elements for Insider Mitigation Program
 - 3. Criminal Penalties
- E. Certified Fuel Handler Definition and Elimination of the Shift Technical Advisor
 - 1. Alternative Definition for Certified Fuel Handler
 - 2. Elimination of the Shift Technical Advisor
- F. Decommissioning Funding Assurance
 - 1. Clarification of § 50.82(a) and § 52.110(h)
 - 2. Changes to Reporting Requirements
 - 3. Shortfalls in Decommissioning Funding Assurance
 - 4. Conforming Changes to 10 CFR Part 52
 - 5. Change to 10 CFR Part 72
- G. Offsite and Onsite Financial Protection Requirements and Indemnity Agreements
 - 1. Proposed Revisions to Offsite Liability and Onsite Property Insurance Requirements
 - 2. Proposed Revision to Extraordinary Nuclear Occurrences Requirements
 - 3. Proposed New Rule Language in § 50.54(w)(6)
- H. Environmental Considerations

1. Clarifying Changes to 10 CFR Parts 50 and 52
2. Consistency Changes to 10 CFR Part 51
- I. Record Retention Requirements
- J. Low-Level Waste Transportation
- K. Spent Fuel Management Planning
 1. Requirements for the IFMP in § 50.54(bb) and the PSDAR in § 50.82 and § 52.110
 2. Requirements in § 72.218 for Termination of the General License for Spent Fuel Storage
- L. Backfit Rule
- M. Foreign Ownership, Control, or Domination
- N. Clarification of Scope of License Termination Plan Requirement
- O. Removal of License Conditions and Withdrawal of Orders
- P. Changes for Consistent Treatment of Holders of Combined Licenses and Operating Licenses
- V. Specific Requests for Comments
- VI. Section-by-Section Analysis
- VII. Regulatory Flexibility Certification
- VIII. Regulatory Analysis
- IX. Backfitting and Issue Finality
 - A. Current and Future Applicants
 - B. Existing Design Certifications
 - C. Existing Licensees
 - D. Backfit Analysis
 1. Introduction and Background
 2. Detailed Description of the Proposed Change Affecting Issue Finality
 3. Benefits: Substantial Increase in Public Health and Safety and Common Defense and Security
 4. Costs
 5. Determination of Substantial Benefits Justifying Costs of the Proposed Change Affecting Issue Finality
 6. Conclusion
 7. Evaluation of Factors in § 50.109(c)(1) Through (9)
 - E. Draft Regulatory Guidance
- X. Cumulative Effects of Regulation
- XI. Plain Writing
- XII. National Environmental Policy Act
- XIII. Paperwork Reduction Act
- XIV. Criminal Penalties
- XV. Voluntary Consensus Standards
- XVI. Availability of Guidance
- XVII. Public Meeting
- XVIII. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0070 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–2015–0070.

- *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, at 301–415–4737, or by email to pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section of this document.

- *NRC's PDR*: You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to 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–2015–0070 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. Background

Under 10 CFR part 50 and 10 CFR part 52, the NRC requires current and future holders of operating licenses and current and future holders of combined licenses, respectively, to comply with a variety of regulatory requirements related to decommissioning. This section discusses previous rules that set out the NRC's requirements for production and utilization facility decommissioning and activities that have led to the development of this proposed rule.

A. 1988 Decommissioning Rule

On June 27, 1988, the NRC published a final rule titled, “General Requirements for Decommissioning Nuclear Facilities” (53 FR 24018) (referred to herein as the “1988 Final Rule”), which established decommissioning requirements for various types of licensees. In this rule, the NRC amended its regulations to provide specific requirements for the decommissioning of nuclear facilities. Specifically, the final rule established regulations on acceptable decommissioning alternatives, planning for decommissioning, decommissioning timeliness, assurance of the availability of funds for decommissioning, and environmental review requirements related to decommissioning. The 1988 Final Rule amended the regulations that applied to applicants and licensees under 10 CFR part 30, “Rules of General Applicability to Domestic Licensing of Byproduct Material”; 10 CFR part 40, “Domestic Licensing of Source Material”; 10 CFR part 50; 10 CFR part 70, “Domestic Licensing of Special Nuclear Material”; and 10 CFR part 72, “Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.”

In the 1988 Final Rule, the NRC defined decommissioning as the “removal of nuclear facilities safely from service and reduction of residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license.” The NRC also stated in the 1988 Final Rule that decommissioning activities do not include the removal and disposal of spent fuel, which is considered to be an operational activity, or the removal and disposal of nonradioactive structures and materials beyond that necessary to terminate the NRC license.

The purpose of the 1988 Final Rule, in part, was to ensure that reactor decommissioning would be carried out with minimal impact on public and occupational health and safety and the environment. The NRC's objective was that decommissioned facility sites would ultimately be available for unrestricted use for any public or private purpose. The amended regulations provided a regulatory framework for efficient and consistent licensing actions related to decommissioning.

The NRC noted in the 1988 Final Rule that, although decommissioning was not an imminent health and safety problem, the number and complexity of facilities that would require decommissioning

was expected to increase, and inadequate or untimely consideration of decommissioning, specifically in the areas of planning and financial assurance, could result in significant adverse health, safety, and environmental impacts. The 1988 Final Rule clearly states that the licensee is responsible for the funding and completion of decommissioning in a manner that protects public health and safety. The NRC stated, “With the increased number of decommissionings expected, case-by-case procedures would make licensing difficult and increase NRC and licensee staff resources needed for these activities” (53 FR 24019).

The 1988 Final Rule required that, within 2 years after a licensee permanently ceases operation of a licensed nuclear facility, the licensee must submit a detailed decommissioning plan to the NRC for approval along with a supplemental environmental report that addresses environmental issues that have not already been considered. Based on these submittals, the NRC reviewed the licensee’s planned activities, prepared a safety evaluation report and an environmental assessment (EA), and either made a finding of no significant impact (the usual case) or prepared an environmental impact statement. Upon approval of the decommissioning plan, the NRC issued an order under § 2.202, “Orders,” permitting the licensee to decommission its facility in accordance with the approved plan. As part of the approval process for the decommissioning plan, the public had the opportunity to request a hearing under 10 CFR part 2, “Agency Rules of Practice and Procedure.” The NRC would terminate the license once the decommissioning process was completed and the NRC was satisfied that the facility had been radioactively decontaminated to an unrestricted release level under § 20.1402, “Radiological criteria for unrestricted use.”¹

If the licensee chose to place the reactor in storage and dismantle it at a later time, the initial decommissioning plan submittal was not required to be as detailed as a plan for prompt dismantlement. However, before the licensee could begin dismantlement, the

regulations required that the licensee submit a detailed plan and environmental report to the NRC for approval. Before the decommissioning plan was approved, the licensee could not perform any major decommissioning activities. If a licensee desired a reduction in requirements because of the permanent cessation of operations, it had to obtain a license amendment for possession-only status. This possession-only license amendment was usually granted after the licensee indicated that the reactor had permanently ceased operations and that fuel had been permanently removed from the reactor vessel. Three examples of licensees that were granted possession-only status are Yankee Atomic Electric Company for the Yankee Nuclear Power Station (Yankee Rowe) (August 5, 1992; ADAMS Accession No. ML17283A069), Portland General Electric Company for the Trojan Nuclear Power Plant (May 5, 1993; ADAMS Accession No. ML18095A126), and Sacramento Municipal Utility District for the Rancho Seco Nuclear Generating Station (March 17, 1992; ADAMS Accession No. ML17283A071).

The 1988 Final Rule required licensees to provide assurance that, at any time during the life of the facility through termination of the license, adequate funds will be available to complete decommissioning. For operating reactors, the 1988 Final Rule prescribed the required amount of decommissioning funding in § 50.75. The 1988 Final Rule also imposed the requirement that, 5 years before license expiration or cessation of operations, licensees must submit a preliminary decommissioning plan containing a site-specific decommissioning cost estimate and appropriately adjust the financial assurance mechanism. In addition, the 1988 Final Rule required licensees to submit a decommissioning plan, including a site-specific cost estimate for decommissioning and a correspondingly adjusted financial assurance mechanism, within 2 years after permanent cessation of operations. For delayed dismantlement of a nuclear facility, the 1988 Final Rule required licensees to submit an updated decommissioning plan with the estimated cost covering the delay of decommissioning and to appropriately adjust the financial assurance mechanism. Before approval of the decommissioning plan, the 1988 Final Rule specified that licensee use of the decommissioning funds would be determined on a case-specific basis for premature closure, when the accrual of

required decommissioning funds may be incomplete.

B. 1996 Decommissioning Rule

On July 29, 1996, the NRC amended its regulations for reactor decommissioning to clarify ambiguities, codify procedures that reduced regulatory burden, provide greater flexibility, and allow for greater public participation in the decommissioning process in a final rule titled, “Decommissioning of Nuclear Power Reactors” (61 FR 39278) (referred to herein as the “1996 Final Rule”). The 1996 Final Rule made fundamental changes to nuclear power reactor decommissioning by streamlining the process and reducing both licensee and NRC resource expenditures while maintaining safety, protecting the environment, and encouraging public involvement.

In the 1996 Final Rule, the NRC explained that the degree of regulatory oversight required for a nuclear power reactor in decommissioning is considerably less than that required for a facility during its operating stage. During the operating stage of the reactor, fuel in the reactor core undergoes a controlled nuclear fission reaction that generates a high neutron flux and large amounts of heat. Safe control of the nuclear reaction involves the use and operation of many complex systems. First, the nuclear reaction must be carefully controlled through neutron-absorbing mechanisms. Second, the heat generated must be removed so that the fuel and its supporting structure do not overheat. Third, the confining structure and ancillary systems must be maintained and degradation caused by radiation and mechanical and thermal stress ameliorated. Fourth, the radioactivity resulting from the nuclear reaction in the form of direct radiation (especially near the high neutron flux areas around the reactor vessel) and any radiologically contaminated materials and radiological effluents (gaseous and liquid) must be minimized and controlled. Moreover, proper operating procedures must be established and maintained, with appropriately trained staff to ensure that the reactor system is properly operated and maintained, and that operating personnel minimize their exposure to radiation when performing their duties. Finally, emergency response procedures must be established and maintained to protect the public in the event of an accident.

Decommissioning of a nuclear power reactor begins when the nuclear fission reaction is stopped and the fuel (in the form of spent fuel assemblies) is permanently removed from the reactor

¹ License termination based upon a facility meeting the unrestricted use criteria under § 20.1402 is the most common license termination scenario. The NRC may also terminate a facility license under restricted conditions (§ 20.1403, “Criteria for license termination under restricted conditions”) and under alternative criteria (§ 20.1404, “Alternative criteria for license termination”).

vessel and placed in the SFP until transferred to interim storage in an onsite ISFSI or transported offsite for storage or disposal. While the spent fuel is still highly radioactive and generates heat caused by radioactive decay, the fuel slowly cools as its energetic decay products diminish. The SFP, which contains circulating water, removes the decay heat and filters out any small radioactive contaminants escaping the spent fuel assemblies. The SFP system is relatively simple to operate and maintain compared to an operating nuclear power reactor. The remainder of the facility may contain radioactive contamination in areas that were directly impacted by reactor operation, and will be more highly contaminated in the area of the reactor vessel. However, no new radioactivity can be generated because the spent fuel is stored in a configuration that precludes the nuclear fission reaction. Once the nuclear fission process has permanently ceased and the fuel assemblies have been removed from the reactor vessel, safety concerns for an SFP are greatly reduced because there is no longer generation of large amounts of heat, high neutron flux and related materials degradation, and other related stresses that result from the functioning of an operating reactor system.

Contaminated areas of the facility must still be controlled to minimize radiation exposure to personnel and control the spread of radioactive material. This situation is now similar to a contaminated materials facility and does not require the oversight that an operating reactor would require.

The amendments issued in the 1996 Final Rule provided licensees with simplicity and flexibility in implementing the decommissioning process, especially with regard to premature closure. The amendments clarified ambiguities in the regulations existing at the time, codified procedures and terminology that had been used in a number of specific cases, and increased opportunities for the public to become informed about the licensee's decommissioning activities. The amendments established a level of NRC oversight commensurate with the level of safety concerns expected during decommissioning activities. Specifically, the 1996 Final Rule established or modified requirements with regard to initial decommissioning activities, major decommissioning activities, and license termination procedures.

With regard to initial decommissioning activities, the 1996 Final Rule mandated that, once a licensee permanently ceases operation

of the nuclear power reactor and removes the fuel assemblies from the reactor vessel, it could not undertake any major decommissioning activities until it provided the public and the NRC with additional information about the proposed decommissioning approach. The NRC required that the licensee submit this information in the form of a PSDAR, which consists of the licensee's proposed decommissioning activities and schedule through license termination, a discussion of the reasons for concluding that the environmental impacts associated with the proposed site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements, and a decommissioning cost estimate for the proposed activities. The NRC makes the PSDAR available to the public for comment and holds a public meeting concerning the PSDAR in the vicinity of the plant. The NRC, however, does not approve the PSDAR and the submission of the PSDAR and its review by the NRC does not require the licensee to request a license amendment or any other approval.

The 1996 Final Rule also established that the licensee may not begin performing major decommissioning activities until 90 days after the NRC receives the PSDAR submittal and until the licensee submits the certifications under § 50.82(a)(1) that operations have permanently ceased and that fuel has been permanently removed from the reactor vessel. The 1996 Final Rule also amended certain 10 CFR part 50 technical requirements to cover the transition of the facility from operating to permanently shutdown status. Specifically, the 1996 Final Rule removed the requirement for a licensee that has permanently ceased operations and removed fuel from the reactor vessel to obtain a license amendment before proceeding with certain decommissioning activities within established regulatory constraints (*i.e.*, in accordance with § 50.59, "Changes, tests and experiments"). These changes to the decommissioning requirements increased the flexibility in the type of actions that licensees could undertake without prior NRC approval.

With regard to major decommissioning activities, the 1996 Final Rule implemented a major change from the 1988 Final Rule in that nuclear power reactor licensees would no longer be required to have an approved decommissioning plan before being permitted to perform major decommissioning activities. The 1996 Final Rule allowed licensees to perform activities that meet the criteria in § 50.59, which the NRC amended to

include additional criteria to ensure that licensees consider concerns specific to decommissioning. Based on NRC experience with licensee decommissioning activities at the time, the NRC recognized that the § 50.59 process used by the licensee during reactor operations encompassed routine activities that were similar to those undertaken during the decommissioning process. The NRC concluded that the licensee could use the § 50.59 process to perform major decommissioning activities if licensing conditions and the level of NRC oversight required during reactor operations continued during decommissioning, commensurate with the risk profile of the facility being decommissioned. The 1996 Final Rule also required the licensee to provide written notification to the NRC before performing any decommissioning activity that is inconsistent with, or makes significant schedule changes from, the actions and schedules described in the PSDAR.

With regard to license termination, the 1996 Final Rule required that a licensee wishing to terminate its license submit a license termination plan for NRC approval. The approval process for the termination plan provides for a hearing opportunity under 10 CFR part 2. The licensee must submit a supplemental environmental report that considers new and significant environmental changes associated with license termination activities. The 1996 Final Rule imposed an additional requirement for the purpose of keeping the public informed. A public meeting, similar to the one held after the PSDAR submittal, must take place after the licensee submits its license termination plan to the NRC.

The 1996 Final Rule continued the same degree of decommissioning financial assurance that was previously required but provided more flexibility by allowing licensees to have limited, early use of decommissioning funds. The NRC presented this provision in a February 3, 1994, draft policy statement titled, "Use of Decommissioning Trust Funds before Decommissioning Plan Approval" (59 FR 5216), which was published for comment and eventually incorporated into the 1996 Final Rule. Before issuance of the 1996 Final Rule, licensee use of these funds was determined on a case-specific basis for prematurely shutdown plants. However, the 1996 Final Rule eliminated the requirement for a decommissioning plan and instead required a PSDAR submittal, which requires a decommissioning cost estimate. The 1996 Final Rule permitted 3 percent of the decommissioning funds generically

required by § 50.75 to be available to the licensee for decommissioning planning purposes. Moreover, to allow the licensee to accomplish major decommissioning activities promptly, an additional 20 percent of the generic funding amount would be made available 90 days after the NRC had received the PSDAR if the licensee had also submitted the certifications required by § 50.82(a)(1). The use of any funds above those amounts required the licensee to submit a site-specific decommissioning cost estimate to the NRC prior to the use of those funds.

C. Post-1996 Final Rule Decommissioning Activity

In a series of Commission papers issued between 1997 and 2001, the NRC staff provided options and recommendations to the Commission to address regulatory improvements related to nuclear power reactor decommissioning. To consolidate these recommendations, in the Staff Requirements Memorandum (SRM) for SECY-99-168, “Staff Requirements—SECY-99-168—Improving Decommissioning Regulations for Nuclear Power Plants,” dated December 21, 1999 (ADAMS Accession No. ML003752190), the Commission directed the NRC staff to proceed with a single, integrated, and risk-informed decommissioning rule addressing the areas of EP, insurance, safeguards, staffing and training, and backfitting for decommissioning nuclear power reactors. The objective of the rulemaking was to clarify and remove certain regulations for decommissioning nuclear power reactors based in large part on the reduction in radiological risk compared to operating reactors.

On June 28, 2000, the NRC staff submitted SECY-00-0145, “Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning,” to the Commission (ADAMS Accession No. ML003721626). In this paper, the NRC staff proposed an integrated decommissioning rulemaking plan and requested Commission approval to proceed with developing an integrated rulemaking for nuclear power plant decommissioning in accordance with the recommendations detailed in the rulemaking plan. The paper addressed the regulatory areas of EP, insurance, safeguards, staffing and training, and backfitting for decommissioning nuclear power reactors. The rulemaking plan was contingent on the completion of a SFP zirconium fire risk study. The Commission responded to SECY-00-0145 in an SRM dated September 27, 2000 (ADAMS Accession No. ML003754381). The Commission

returned that SECY to the staff without a vote on the rulemaking plan pending further developments in the area and requested that the staff submit a revised paper to the Commission.

D. Spent Fuel Pool Studies

In the late 1990s and early 2000s, the NRC was assessing the risk of an SFP accident at a nuclear power reactor site in decommissioning. Following the removal of spent fuel from the reactor, the principal radiological risks are associated with the storage of spent fuel on site. Generally, a few months after the reactor has been permanently shut down and defueled, there are no possible design-basis accidents that could result in a radiological release exceeding the limits established by the U.S. Environmental Protection Agency (EPA) early-phase Protective Action Guides (PAGs) at the exclusion area boundary (EPA-400-R-92-001, “Manual of Protective Action Guides And Protective Actions For Nuclear Incidents,” issued May 1992, and final revision EPA-400/R-17/001, “PAG Manual: Protective Action Guides and Planning Guidance for Radiological Incidents,” issued January 2017). The only SFP accident scenario that might lead to a release with offsite consequences exceeding the PAGs at a decommissioning reactor is a zirconium fire. The zirconium fire scenario is a postulated, but highly unlikely, beyond-design-basis accident scenario that involves a major loss of water inventory from the SFP, resulting in a significant heatup of the spent fuel, and culminating in substantial zirconium cladding oxidation, fire, and fuel damage. The significance of spent fuel heatup scenarios that might result in a zirconium fire depends on the decay heat of the irradiated fuel stored in the SFP. Therefore, the probability of a zirconium fire scenario continues to decrease as a function of the time that the decommissioning reactor has been permanently shut down and defueled.

In the 1980s, the NRC examined the risk of an SFP accident as Generic Safety Issue 82, “Beyond Design Basis Accidents in Spent Fuel Pools,” because of the increased use of high-density storage racks and laboratory studies that indicated the possibility of a zirconium fire spreading between assemblies in an air-cooled environment (see Section 3 of NUREG-0933, “Resolution of Generic Safety Issues,” issued December 2011 (available at <https://www.nrc.gov/sr0933/Section%203.%20New%20Generic%20Issues/082r3.html>)). The risk assessment and cost benefit analyses developed through this effort (Section 6.2 of NUREG-1353,

“Regulatory Analysis for the Resolution of Generic Issue 82, ‘Beyond Design Basis Accidents in Spent Fuel Pools,’” issued April 1989 (ADAMS Accession No. ML082330232)) concluded that the risk of a severe accident in the SFP was low and appeared to meet the public health objectives of the Commission’s Safety Goal Policy Statement (51 FR 30028; August 21, 1986) and that no new regulatory requirements were warranted.

To support the rulemaking for decommissioning nuclear power plants in the late 1990s, the NRC reevaluated the risk of an SFP accident. The NRC’s assessment in NUREG-1738, “Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants,” issued February 2001 (ADAMS Accession No. ML010430066), conservatively assumed that if the water level in the SFP dropped below the top of the spent fuel, an SFP zirconium fire involving all of the spent fuel would occur and thereby bounded those conditions associated with air cooling of the fuel (including partial draindown scenarios) and fire propagation. Even with this conservative assumption, the study found the risk of an SFP fire to be low and well within the Commission’s safety goals.

Although NUREG-1738 did not completely rule out the possibility of a zirconium fire, it did demonstrate that storage of spent fuel in a high-density configuration in SFPs is safe and that the risk of accidental release of a significant amount of radioactive material to the environment is low. The study used simplified and sometimes bounding assumptions and models to characterize the likelihood and consequences of beyond-design-basis SFP accidents. Subsequent NRC regulatory activities and studies (described in more detail in this section) have reaffirmed the safety and security of spent fuel stored in pools and have demonstrated that SFPs are effectively designed to prevent accidents and minimize damage from malevolent attacks.

In the wake of the terrorist attacks of September 11, 2001, the NRC took several actions to further reduce the possibility of an SFP fire. The NRC issued immediately effective nonpublic orders (see the cover letter at ADAMS Accession No. ML020510637) that required licensees to implement additional security measures, including increased patrols, augmented security forces and capabilities, and more restrictive site-access controls to reduce the likelihood of an SFP accident resulting from a terrorist-initiated event. A memorandum to the Commission

titled, "Documentation of Evolution of Security Requirements at Commercial Nuclear Power Plants with Respect to Mitigation Measures for Large Fires and Explosions," dated February 4, 2010 (ADAMS Accession No. ML092990438), provides a comprehensive discussion of these actions, some of which specifically address SFP safety and security.

New requirements to mitigate a postulated loss of SFP water inventory were also implemented following the terrorist attacks of September 11, 2001; these requirements resulted in enhanced spent fuel coolability and the potential to recover SFP water level and cooling prior to a postulated SFP zirconium fire. Based on the implementation of these additional strategies, the probability and, accordingly, the risk to the public health and safety of an SFP zirconium fire scenario has decreased and is expected to be less than previously analyzed in NUREG-1738 and previous studies.

After the events of September 11, 2001, the NRC also addressed by order the issue of potential aircraft impacts to the SFP by requiring licensees to have in place mitigating strategies for large fires or explosions at nuclear power plants. The Nuclear Energy Institute (NEI) provided detailed guidance in NEI 06-12, Revision 2, "B.5.b Phase 2 & 3 Submittal Guideline," dated December 2006 (ADAMS Accession No. ML070090060). The NRC found this guidance acceptable for use as documented in NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition," Section 19.4, "Strategies and Guidance to Address Loss of Large Areas of the Plant Due to Explosions and Fires," Revision 0, dated June 2015 (ADAMS Accession No. ML13316B202). The NRC's issuance of the final rule titled, "Power Reactor Security Requirements," on March 27, 2009 (74 FR 13926), made the requirements of the order generically applicable. In that final rule, the NRC added § 50.54(hh)(2) to require licensees to develop and implement guidance and strategies to, among other things, maintain or restore SFP cooling capability in the event of loss of large areas of the plant resulting from fires or explosions, which further decreases the probability of an SFP fire.

Under § 50.54(hh)(2), nuclear power reactor licensees are required to implement strategies such as those provided in NEI 06-12. The NEI guidance specifies that portable, power independent pumping capabilities must be able to provide at least 500 gallons per minute of bulk water makeup to the

SFP and at least 200 gallons per minute of water spray to the SFP. Recognizing that the SFP is more susceptible to a release when the spent fuel is in a nondispersed configuration (*i.e.*, fuel assemblies with more decay heat are not dispersed among fuel assemblies with less decay heat), the guidance also specifies that the portable equipment should be capable of being deployed within 2 hours for a nondispersed configuration.

Further, other organizations, such as Sandia National Laboratories (SNL), have confirmed the effectiveness of the additional mitigation strategies to maintain spent fuel cooling in the event that the pool is damaged and its initial water inventory is reduced or lost entirely. The analyses conducted by SNL (collectively referred to as the "Sandia studies") are sensitive security-related information and are not available to the public. The Sandia studies considered spent fuel loading patterns and other aspects of a pressurized water reactor SFP and a boiling water reactor SFP, including the role that the circulation of air plays in the cooling of spent fuel when there is a partial or complete loss of water. The Sandia studies indicated that there is a significant amount of time between the initiating event (*i.e.*, the event that causes the SFP water level to drop) and the point at which the spent fuel assemblies become partially or completely uncovered. In addition, the Sandia studies indicated that for those hypothetical conditions in which air cooling may not be effective in preventing a zirconium fire, there is a significant amount of time between the spent fuel becoming uncovered and the possible onset of such a zirconium fire, thereby providing a substantial opportunity for event mitigation. The Sandia studies, which account for relevant heat transfer and fluid flow mechanisms, also indicated that air cooling spent fuel could be sufficient to prevent SFP zirconium fires at a point much earlier following fuel offload from the reactor than previously considered in NUREG-1738.

In NUREG-2161, "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor," issued September 2014 (ADAMS Accession No. ML14255A365), the NRC evaluated the potential benefits of strategies required in § 50.54(hh)(2). The report explains that successful implementation of mitigation strategies significantly reduces the likelihood of a release from the SFP in the event of a loss of cooling water. Additionally, the NRC found that the placement of spent

fuel in a dispersed configuration in the SFP would have a positive effect in promoting natural circulation, which enhances air coolability and thereby reduces the likelihood of a release from a completely drained SFP. The NRC issued Information Notice 2014-14, "Potential Safety Enhancements to Spent Fuel Pool Storage," dated November 14, 2014 (ADAMS Accession No. ML14218A493), to all nuclear power reactor and ISFSI licensees to inform them of the insights from NUREG-2161. This information notice describes the benefits of storing spent fuel in more favorable configurations, placing spent fuel in dispersed patterns immediately after core offload, and taking action to improve mitigation strategies.

In 2013, the NRC documented a regulatory analysis in COMSECY-13-0030, "Staff Evaluation and Recommendation for Japan Lessons Learned Tier 3 Issue on Expedited Transfer of Spent Fuel" (ADAMS Accession No. ML13329A918), which considered a broad history of the NRC's oversight of spent fuel storage and SFP operating experience (domestic and international) and relied on information compiled in NUREG-2161. In COMSECY-13-0030, the NRC staff concluded that SFPs are robust structures with large safety margins and recommended to the Commission that further regulatory actions to require the expedited transfer of spent fuel from SFPs to dry cask storage were not warranted. The Commission subsequently approved the staff's recommendation in SRM-COMSECY-13-0030, dated May 23, 2014 (ADAMS Accession No. ML14143A360).

In addition, in response to the Fukushima Dai-ichi accident, the NRC implemented additional regulatory actions to further enhance reactor and SFP safety. On March 12, 2012, the NRC issued two orders: Order EA-12-051, "Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation" (ADAMS Accession No. ML12054A679), and Order EA-12-049, "Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events" (ADAMS Accession No. ML12054A735). Order EA-12-051 required licensees to install reliable means of remotely monitoring wide-range SFP levels to support effective prioritization of event mitigation and recovery actions in the event of a beyond-design-basis external event. Although the primary purpose of the order was to ensure that operators were not distracted by uncertainties related to SFP conditions during the accident

response, the improved monitoring capabilities would help in the diagnosis and response to potential losses of SFP integrity. Order EA-12-049 required licensees to, among other actions, develop, implement, and maintain guidance and strategies to maintain or restore SFP cooling capabilities independent of normal alternating current power systems following a beyond-design-basis external event. Further, the NRC issued the Mitigation of Beyond-Design-Basis Events final rule on August 9, 2019 (84 FR 39684), which made these two orders generically applicable and moved the requirements of § 50.54(hh)(2) to paragraph (b)(2) of the new § 50.155, “Mitigation of beyond-design-basis events.” These requirements ensure that a more reliable and robust mitigation capability is in place to address degrading conditions in SFPs resulting from certain significant, but unlikely, events.

The additional mitigation strategies implemented after the terrorist attacks of September 11, 2001, such as the issuance of § 50.54(hh)(2) (now § 50.155(b)(2)) and the NRC’s review and approval of NEI 06-12, and the issuance of Orders EA-12-049 and EA-12-051, made generically applicable as § 50.155(b)(1) and § 50.155(e), following the Fukushima Dai-ichi accident enhance spent fuel coolability and the potential to recover SFP water level and cooling before the initiation of a potential SFP zirconium fire. The Sandia studies also confirmed the effectiveness of additional mitigation strategies to maintain spent fuel cooling in the event that the pool is drained. Based on this information and the implementation of additional strategies, the probability of an SFP zirconium fire initiation in a draindown event is expected to be less than that reported in NUREG-1738 and previous studies and therefore well within the Commission’s expressed safety goals, as described previously.

E. Changes in Nuclear Power Reactor Decommissioning at the NRC and Within the Nuclear Power Industry

On June 4, 2001, the NRC staff submitted SECY-01-0100, “Policy Issues Related to Safeguards, Insurance, and Emergency Preparedness Regulations at Decommissioning Nuclear Power Plants Storing Fuel in Spent Fuel Pools” (ADAMS Accession No. ML011450420), to the Commission. Before the Commission responded to SECY-01-0100, the terrorist attacks of September 11, 2001, occurred. Given the security implications of those events and the results of the NUREG-1738 zirconium fire risk study that showed

the risk of an SFP fire to be low and well within the Commission’s safety goals, the NRC later redirected its rulemaking priorities and resources to focus on programmatic regulatory changes related to safeguards and security. In a memorandum to the Commission titled, “Status of Regulatory Exemptions for Decommissioning Plants,” dated August 16, 2002 (ADAMS Accession No. ML030550706), the NRC staff justified this redirection in part by observing that no additional permanent nuclear power reactor shutdowns were anticipated in the foreseeable future and that no immediate need existed to proceed with the decommissioning regulatory improvement work that was planned. The NRC staff concluded that, if any additional nuclear power reactors permanently shut down after the rulemaking effort was suspended, establishment of the decommissioning regulatory framework would continue to be addressed for each facility through the license amendment and exemption processes.

Between 1998 and 2013, no nuclear power reactors permanently ceased operation. Between 2013 and 2021, however, 12 nuclear power reactors permanently shut down, defueled, and entered decommissioning. Notably, in 2013, four nuclear power reactor units permanently shut down without significant advance notice or preplanning: Crystal River Unit 3 Nuclear Generating Plant (Duke Energy Florida); Kewaunee Power Station (Dominion Energy); and San Onofre Nuclear Generating Station (SONGS), Units 2 and 3 (Southern California Edison). In addition, on December 29, 2014, Entergy Nuclear Operations, Inc. (Entergy) permanently ceased operations at the Vermont Yankee Nuclear Power Station (VY); on October 24, 2016, the Omaha Public Power District permanently ceased operations at Fort Calhoun Station, Unit 1; on September 17, 2018, Exelon Generation Company, LLC (Exelon) permanently ceased operations at Oyster Creek Nuclear Generating Station; on May 31, 2019, Entergy permanently ceased operations at Pilgrim Nuclear Power Station; on September 20, 2019, Exelon permanently ceased operations at Three Mile Island, Unit 1; on April 30, 2020, and April 30, 2021, respectively, Entergy permanently ceased operations at Indian Point Nuclear Generating, Unit Nos. 2 and 3; and on August 10, 2020, NextEra Energy Duane Arnold, LLC (NextEra) permanently ceased operations of Duane Arnold Energy Center. Licensees have also announced plans for additional near-term

permanent shutdowns, including Palisades Nuclear Plant (Entergy) and Diablo Canyon Power Plant, Units 1 and 2 (Pacific Gas & Electric Co.).

Decommissioning reactor licensees and the NRC have expended substantial resources processing licensing actions for nuclear power reactors during their transition period to decommissioning status. Consistent with the nuclear power reactors that permanently shut down in the 1990s, the licensees that are currently transitioning to decommissioning have been requesting NRC review and approval of licensing actions, informed by the low risk of an offsite radiological release posed by a decommissioning reactor. Specifically, the licensees are seeking NRC approvals of exemptions from requirements and license amendments to reflect the reduced operations and radiological risks posed by a permanently shutdown and defueled nuclear power reactor.

F. Decommissioning Lessons Learned Report

In October 2016, the NRC published the “Power Reactor Transition from Operations to Decommissioning: Lessons Learned Report” (ADAMS Accession No. ML16085A029). The report documents the lessons learned by the NRC and stakeholders associated with permanent nuclear power reactor shutdowns during the period from 2013 to 2016. In particular, the report focuses on the transition from reactor operations to decommissioning for Kewaunee, Crystal River Unit 3, SONGS Units 2 and 3, and VY. The transition process includes the NRC’s review and approval of certain requests for exemptions from the NRC’s regulations and for license amendments to modify the operating reactors’ licensing bases to reflect those of decommissioning reactors. After these actions are complete, the NRC then transfers the project management and oversight responsibility from its Office of Nuclear Reactor Regulation to its Office of Nuclear Material Safety and Safeguards (NMSS). Project management support is provided by NMSS for these decommissioning reactors until license termination. The report also provides a number of best practices identified from recent experience with reactor shutdowns and the transition to decommissioning.

The report highlights some of the challenges experienced by the NRC during the decommissioning transition licensing reviews from 2013 to 2016 and the NRC’s actions to address those challenges. The report also discusses external stakeholders’ interest in the NRC’s review of the decommissioning transition licensing activities, especially

those associated with SONGS Units 2 and 3 and VY, as represented by requests for hearings, public meetings, and questions to the NRC staff.

In addition to the lessons learned and best practices, the report provides detailed project management guidance, recommendations, and documentation of precedent related to the reviews and evaluations specific to the types of licensing actions that the NRC expects to be processed during the decommissioning transition period, including oversight activities and communications. The NRC considered many of the lessons learned and recommendations described in this report during the development of this proposed rule.

G. Initiation of This Proposed Rule

In light of the number of licensees deciding to permanently shut down their nuclear power reactors, the Commission directed the NRC staff to proceed with an integrated rulemaking on nuclear power reactor decommissioning in an SRM dated December 30, 2014 (ADAMS Accession No. ML14364A111), associated with SECY-14-0118, "Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements," dated October 29, 2014 (ADAMS Accession No. ML14219A444). The Commission further stated that this rulemaking should address:

- Issues discussed in SECY-00-0145 such as the graded approach to EP;
- Lessons learned from the plants that have already gone through (or are currently going through) the decommissioning process;
- The advisability of requiring a licensee's PSDAR to be approved by the NRC;
- The appropriateness of maintaining the three existing options for decommissioning (DECON, SAFSTOR, and ENTOMB)² and the timeframes associated with those options;
- The appropriate role of State and local governments and non-governmental stakeholders in the decommissioning process; and
- Any other issues deemed relevant by the NRC staff.

In SECY-15-0014, "Anticipated Schedule and Estimated Resources for a Power Reactor Decommissioning Rulemaking," dated January 30, 2015 (ADAMS Accession No. ML15082A089, redacted), the NRC staff committed to proceed with a rulemaking on nuclear

power reactor decommissioning and provided an anticipated schedule and estimate of the resources required for the completion of a decommissioning rulemaking.

H. Advance Notice of Proposed Rulemaking

To begin the nuclear power reactor decommissioning rulemaking process, the NRC published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on November 19, 2015 (80 FR 72358). In the ANPR, the NRC sought public comment on specific questions and issues with respect to possible revisions of the NRC's decommissioning requirements. The NRC staff considered the comments received on the ANPR in its formulation of a draft regulatory basis for further regulatory action. Section 5 of the draft regulatory basis (ADAMS Accession No. ML17047A413) summarizes the public comments received on the ANPR.

I. Regulatory Basis

The NRC published the draft regulatory basis in the **Federal Register** on March 15, 2017 (82 FR 13778). In the draft regulatory basis, the NRC staff presented draft recommendations for amendments to the NRC's regulations and guidance development to provide regulatory improvements for nuclear power reactors transitioning to decommissioning. The NRC requested public comment on these recommendations and asked specific questions regarding other possible revisions of the NRC's requirements. In addition, the NRC published a preliminary draft regulatory analysis on May 9, 2017 (82 FR 21481). The NRC held a public meeting from May 8-10, 2017, to discuss the draft regulatory basis and the associated preliminary draft regulatory analysis and issued a summary of the meeting on November 15, 2017 (ADAMS Accession No. ML17157B211).

The NRC received 40 public comment submissions on the draft regulatory basis and preliminary draft regulatory analysis, which it considered in its formulation of the revised regulatory basis. The NRC published a **Federal Register** notice announcing the public availability of the regulatory basis on November 27, 2017 (82 FR 55954).³

³ At the time of publication of the regulatory basis, the rulemaking title was "Regulatory Improvements for Power Reactors Transitioning to Decommissioning." During the development of the proposed rule, the scope of the rulemaking expanded to include all production and utilization facilities licensed under 10 CFR parts 50 and 52. In order to reflect this change, the NRC has changed the title of the rulemaking to "Regulatory

III. Discussion

A. Current Regulatory Process

Decommissioning requirements for production and utilization facilities are codified in §§ 50.82 and 52.110. Associated decommissioning funding requirements are codified in §§ 50.75, 50.82, and 52.110. A nuclear power reactor licensee formally begins the decommissioning process when it certifies its permanent cessation of operations and permanent removal of fuel from the reactor vessel under §§ 50.82(a)(1) or 52.110(a). Once the NRC docketes these certifications, under § 50.82(a)(2) or § 52.110(b), the 10 CFR part 50 or 10 CFR part 52 license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel. Despite this withdrawal of authority to operate the reactor, a decommissioning nuclear power plant continues to retain a license under 10 CFR part 50 or 10 CFR part 52. For this reason, the decommissioning plant continues to be subject to many of the requirements that apply to plants authorized to operate under 10 CFR part 50 or 10 CFR part 52.

Regulations that are designed to protect the public against reactor operation related design-basis events that include conditions of normal operation, anticipated operational occurrences, and design-basis accidents (DBAs) are no longer applicable at a permanently shutdown and defueled reactor. For example, certain accident sequences for a nuclear power reactor that is operating, such as loss of coolant accidents and anticipated transients without scram, are no longer relevant to a permanently shutdown and defueled reactor. In addition, some regulations may not be relevant to certain SSCs because the SSCs are no longer required to be maintained, to operate, or to mitigate certain accidents, events, or transients, regardless of whether they are safety-related or security-related SSCs. Other regulations, although based on power operation of the plant, may continue to be applicable to the permanently defueled facility for a limited time, such as the standards for offsite radiological emergency preparedness (REP) plans under 10 CFR part 50 or 10 CFR part 52. Typically, the scope of NRC requirements can be reduced to those regulations and requirements that primarily pertain to the safe storage of the spent fuel in the SFP, as described in the site's final safety analysis report (FSAR).

² Additional information about the existing options for decommissioning is available in NUREG/BR-0521, Rev. 1, "Decommissioning Nuclear Power Plants," dated June 2017 (ADAMS Accession No. ML17177A253).

Upon permanent cessation of reactor operations and removal of fuel from the reactor vessel, the licensee is likely to submit a significant number of licensing actions (license amendment and exemption requests) to the NRC for review and approval based primarily on the reduced radiological risk to public health and safety. As discussed previously in this document, the types of potential accidents at decommissioning reactors are fewer, and the risks of radiological releases are reduced, when compared to those at an operating reactor. Therefore, to reflect this reduction in risk, licensees of decommissioning reactors typically request certain amendments to their licenses and certain exemptions from the NRC's regulations. These licensing actions, which are processed by the NRC during licensees' transition from operating to decommissioning status, establish the regulatory framework for reactors that have permanently shut down and defueled.

For non-power reactor facilities, § 50.82(b) requires that the licensee apply for license termination within two years following permanent cessation of operation. Each application for termination of a license must be accompanied, or preceded, by a proposed decommissioning plan (DP). In addition to the DP required by § 50.82, § 50.75(f)(4) requires each licensee to submit a preliminary DP. The preliminary DP must be submitted at or about 2 years before the projected end of operation. In addition to the DP, § 51.53(d) requires each applicant for a license amendment approving a DP to submit a supplement to its environmental report (ER).

The decommissioning process for non-power reactor licensees begins with the removal of fuel as soon as possible after reactor operations permanently cease and the shipment of the fuel offsite in accordance with the U.S. Department of Energy, NRC, and U.S. Department of Transportation regulations. Under some circumstances, the licensee can apply for a possession-only license amendment under § 50.90, "Application for amendment of license, construction permit, or early site permit," after operations have ended and before decommissioning starts. The possession-only license amendment limits the licensee's authority to possessing specific nuclear material but does not authorize its use or the operation of a nuclear facility. If granted, a possession-only license amendment provides regulatory relief from the license and technical specification (TS) requirements for a non-power reactor in decommissioning.

Further, the possession-only amendment permits the licensee to retain the facility, related radioactive byproduct material, and, in some cases, special nuclear material, pending approval of the DP.

In addition to requesting license amendments and exemptions, nuclear power reactor licensees can make certain changes without prior NRC approval if the changes are permitted by an NRC regulation. Licensees primarily use an evaluation process with criteria in § 50.59 to make changes in a facility (or procedures) as described in the FSAR (as updated), including changes to the PSDAR, without prior NRC approval. The licensee's updated FSAR should reflect changes to the decommissioning design-basis analyses, SSCs, and the licensee's organizations, processes, and procedures. Licensees can also make changes without prior NRC approval as described in § 50.54(p) and § 50.54(q). In the case of non-power reactor facilities, the DP, which is put into effect with an order, provides for accommodation of any necessary changes in the DP and procedures through a process similar to the one in § 50.59.

The timing and implementation for some decommissioning licensing actions rely on an approach that recognizes the reduction in radiological risk after permanent cessation of power operation and removal of fuel from the reactor vessel. These risk reductions can be tied to several factors, including, but not limited to: (1) Reduction of the radiological source term after cessation of power operation and removal of fuel from the reactor vessel, (2) elapsed time after permanent shutdown, and (3) type of long-term onsite fuel storage. The two areas where these additional risk reductions are considered in the early decommissioning process are EP and facility insurance and indemnity. The NRC will not approve exemptions from EP and insurance coverage requirements until analyses confirm that there are no DBAs that would require protective actions for the public resulting from a release of radioactive material with a dose exceeding the EPA's PAGs at the exclusion area boundary. The analyses also must assess a postulated beyond-design-basis zirconium fire scenario.

B. Objectives of This Proposed Rule

This proposed rule would amend the current requirements for production and utilization facility licensees during decommissioning. Experience has demonstrated that licensees for decommissioning nuclear power reactors seek several exemptions and license amendments per site to establish

a long-term licensing basis for decommissioning. Non-power production or utilization facility licensees typically seek license amendments in decommissioning to change their 10 CFR part 50 operating licenses to possession-only licenses. By issuing this rule, the NRC would establish regulations that would maintain safety and security at sites transitioning to decommissioning without the need to grant specific exemptions or license amendments in certain regulatory areas. Specifically, the decommissioning rulemaking would: (1) Propose a regulatory regime that continues to provide reasonable assurance of adequate protection of public health and safety and the common defense and security at decommissioning sites; (2) ensure that the requirements for decommissioning are clear and appropriate; (3) adopt regulations to address generic issues applicable to all decommissioning nuclear power reactors that have historically been addressed through similarly worded exemptions or license amendments; and (4) identify, define, and resolve additional areas of concern related to the regulation of decommissioning licensees under 10 CFR parts 50 and 52.

Given that the current regulatory framework regarding decommissioning is adequate to protect public health and safety and the common defense and security, many of the new requirements proposed by this rulemaking are alternatives to the current requirements.

C. Applicability

This proposed rule would apply to the following categories of license holders:

- Nuclear power reactors currently licensed under 10 CFR part 50
- Future nuclear power reactors licensed under 10 CFR part 50
- Nuclear power reactors currently licensed under 10 CFR part 52
- Future nuclear power reactors licensed under 10 CFR part 52
- Non-power production or utilization facilities and fuel reprocessing plants currently licensed under 10 CFR part 50
 - Future non-power production or utilization facilities and fuel reprocessing plants licensed under 10 CFR part 50

D. Applicability to NRC Licensees During Operations

The proposed rule includes changes in three areas that would apply to NRC licensees during operations: (1) The process to change a licensee's security plan, (2) the timing of decommissioning

funding assurance reporting requirements, and (3) identification of 10 CFR 26.3, “Scope,” as a regulation with substantive requirements that could result in criminal penalties if violated.

The NRC’s regulations in § 50.54(p) establish processes that allow licensees to make changes to their security plans. The NRC is proposing that all nuclear power reactor licensees making a change under § 50.54(p)(2) submit in their report of the change a summary of any analysis that was completed to make the determination that the change does not decrease the safeguards effectiveness of the security plan. Additionally, the NRC is proposing to revise § 50.54(p) to include definitions of the terms “change” and “decrease in safeguards effectiveness.” The application of these definitions is limited to use with the revised § 50.54(p) and will apply to all holders of 10 CFR part 50 operating licenses and 10 CFR part 52 combined licenses.

The proposed rule would change the timing of the decommissioning funding assurance reporting requirements in § 50.75(f)(1) to coordinate them with the ISFSI decommissioning reporting requirements in § 72.30, “Financial assurance and recordkeeping for decommissioning.” This change would convert the biennial decommissioning funding status report required for 10 CFR part 50 and 10 CFR part 52 nuclear power reactor licensees to a triennial decommissioning funding status report as currently required for 10 CFR part 72 ISFSI licensees.

Current § 26.3 includes a substantive requirement and violations of this regulation should be subject to criminal penalties. Therefore, this proposed rule would remove § 26.3 from the list of provisions that are not subject to criminal penalties if violated in § 26.825(b).

E. Applicability to ISFSI-Only and Standalone ISFSI/Decommissioned Reactor Sites

During the public comment period for the draft regulatory basis, the NRC received many comments on the applicability of the decommissioning rulemaking to “standalone ISFSI”⁴ sites

where the associated reactor has already been decommissioned in comparison with “ISFSI-only” sites. As part of this rulemaking effort, the NRC recommends standardizing the terms “ISFSI-only” and “standalone ISFSI/Decommissioned Reactor” as follows:

- “ISFSI-only” sites contain nuclear power reactor facilities that are still involved in decommissioning activities, but the spent fuel has been completely transferred from the SFPs to dry storage in an onsite ISFSI. For these facilities, the remaining decommissioning activities are primarily related to remediation of any remaining residual radioactivity at the site to meet the license termination and decommissioning criteria in 10 CFR part 20, subpart E. The “ISFSI-only” term refers to the location of the spent fuel; the term reflects that no spent fuel is stored in the SFP, and all of the spent fuel is in dry storage in an onsite ISFSI.

- “Standalone ISFSI/Decommissioned Reactor” sites are those former nuclear power reactor facilities where the license termination and decommissioning criteria in 10 CFR part 20, subpart E, have already been met, with the exception of the ISFSI area. The licensee’s 10 CFR part 50 license for the site has been reduced to an area that only encompasses the ISFSI facility (unless the facility ISFSI is licensed under a 10 CFR part 72 specific license, in which case the 10 CFR part 50 license is wholly terminated). The remaining activities at these facilities that are regulated by the NRC are spent fuel storage and the eventual decommissioning of the ISFSI itself, once the spent fuel has been permanently removed from the site. A 10 CFR part 72 specific license ISFSI is decommissioned in accordance with 10 CFR 72.54, “Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.”

Accordingly, the proposed requirements would not apply to standalone ISFSI/Decommissioned Reactor sites because those licensees have already decommissioned their 10 CFR part 50 facilities and met the decommissioning and license termination criteria in 10 CFR part 20, subpart E, with the exception of the area encompassed by the remaining ISFSI. The proposed requirements are consistent with the licensing actions that the NRC has already approved for these licensees. In addition, the proposed requirements of this rulemaking provide an alternative to the

existing decommissioning regulations and would not impose new requirements on ISFSI-only licensees.

F. Graded Approach

As the NRC reviewed the exemption and license amendment requests related to the recent nuclear power reactor decommissionings and noted the growing list of future planned permanent shutdowns, as discussed in the “Background” section of this document, the NRC realized that the existing regulatory framework could and should be revised to provide for a more efficient decommissioning process. As early as the late 1990’s, the NRC contemplated an integrated rulemaking to provide an appropriate graded approach to the decommissioning process. A graded approach is a process by which the safety requirements and criteria adjust during the decommissioning process commensurate with several factors. These factors include the magnitude of any credible hazard involved, the particular characteristics of a facility, and the balance between radiological hazards and non-radiological hazards (e.g., fire, flood, chemical spill) as applicable to specific points in time within the decommissioning process. This approach would be a risk-informed process.

Currently, no explicit regulatory provisions distinguish requirements in several technical areas for a nuclear power reactor that has permanently ceased operations from those for an operating nuclear power reactor. To address this, the NRC is proposing to amend its regulations to provide an efficient regulatory framework for the transition to decommissioning. Under this proposed rule, the NRC would adopt an optional graded approach for several technical areas that provides a set of requirements commensurate with the reductions in radiological risk at each of the following four levels of decommissioning: (1) Permanent cessation of operations and permanent removal of all fuel from the reactor vessel, (2) sufficient decay of fuel in the SFP such that it would not reach ignition temperature for the zirconium alloy cladding of the fuel within 10 hours under adiabatic heatup conditions (i.e., a complete loss of SFP water inventory with no heat loss), (3) transfer of all fuel to dry storage, and (4) removal of all fuel from the site. Four technical areas of this proposed rule (Emergency Preparedness, Physical Security, Cyber Security, and Offsite and Onsite Insurance) use all or some of this graded approach.

⁴ Given that the public comments referred to “standalone ISFSIs,” this proposed rule uses that same terminology. However, in accordance with Inspection Manual Chapter 2690, “Inspection Program for Dry Storage of Spent Reactor Fuel at Independent Spent Fuel Storage Installations and for 10 CFR part 71 Transportation Packagings,” dated March 9, 2012, the NRC uses the term “away-from-reactor (AFR) ISFSI” to refer to “any general licensed ISFSI where decommissioning and final survey activities related to reactor operations are completed and the only remaining operation

conducted under the 10 CFR part 50 license is the operation of the general licensed ISFSI.”

G. Technical Basis for Graded Approach

The NRC has approved exemptions from the emergency planning regulations in § 50.47, “Emergency Plans,” and appendix E, “Emergency Planning and Preparedness for Production and Utilization Facilities,” to 10 CFR part 50 at several permanently shutdown and defueled nuclear power reactor sites. Licensees that have been granted EP exemptions must maintain an onsite emergency plan addressing the classification of an emergency, notification of emergencies to licensee personnel and offsite authorities, and coordination with designated offsite government officials following an event declaration so that, if needed, offsite authorities may initiate appropriate response actions. At the appropriate points in decommissioning, the EP exemptions may also relieve the licensee from certain requirements of § 50.47 and appendix E to 10 CFR part 50 as they pertain to offsite radiological EP, including the requirement to maintain the 10-mile plume exposure pathway and the 50-mile ingestion pathway emergency planning zones (EPZs). The NRC granted these exemptions based, in part, on its determination that there are no applicable design-basis accidents at a decommissioning licensee’s facility that could result in an offsite radiological release exceeding the limits established by the EPA’s early-phase PAGs at the exclusion area boundary.

The NRC also relied on analyses from NUREG–1738 that showed that emergency planning would be of marginal benefit in reducing the risk of a beyond-design-basis zirconium fire in the SFP if the accident evolved slowly enough to allow mitigative measures and, if necessary, to allow offsite protective actions to be implemented without preplanning. This conclusion was based, in part, on the assumption that it would take at least 10 hours for spent fuel to heat up to the temperature at which the onset of fission product release is expected during an SFP rapid draindown event. This 10-hour period would provide a substantial amount of time for the licensee to take onsite mitigation measures and, if necessary, for offsite authorities to take appropriate response actions to protect the public. To support the approval of exemptions from portions of the EP regulations, licensees had to demonstrate through site-specific analyses that in a draindown event at their SFP the fuel would not reach the zirconium fuel cladding ignition temperature for at least 10 hours under adiabatic heatup conditions.

A 10-hour timeframe has been justified in the past for similar purposes. In the Low Power Rule (47 FR 30232; July 13, 1982), the NRC amended its regulations to clarify that no NRC or Federal Emergency Management Agency (FEMA) review, findings, and determinations concerning the state or adequacy of offsite emergency preparedness were necessary for issuance of operating licenses authorizing fuel loading and low power operation (*i.e.*, up to 5 percent of rated power). The NRC determined that several factors contributed to a substantial reduction in risk and potential accident consequences for low power testing as compared to the higher risks in continuous full power operation. These factors included consideration of the reduced source term, the capability of mitigation systems, and the time scale for taking actions to identify and mitigate an accident. Even for a postulated low-likelihood, design-basis accident during low power operations, which eventually results in release of fission products into the containment, at least 10 hours would be available to allow adequate precautionary actions to be taken to protect the public near the site.

To support a graded approach during decommissioning, the NRC further examined the certainty and margin provided by a 10-hour timeframe for the fuel to heat up in relation to the time for taking mitigating actions and appropriate EP response actions. The NRC conducted an applied research study (“Transmittal of Reports to Inform Decommissioning Plant Rulemaking for User Need Request NSIR–2015–001,” dated May 31, 2016 (ADAMS Accession No. ML16110A416)) with three tasks: (1) To perform a task analysis that includes a timeline of responder actions at representative SFP configurations to mitigate a draindown event and determine its likelihood of success, (2) to analyze representative spent fuel to determine the decay time necessary for the fuel to remain below zirconium clad ignition temperature for at least 10 hours assuming adiabatic heatup conditions, and (3) to analyze the offsite dose rate from the radionuclides released during a hypothetical spent fuel zirconium clad ignition accident. As demonstrated in these analyses, for many initiating events at decommissioning reactors, mitigative actions would have a high likelihood of preventing uncontrolled spent fuel heatup. In cases where an uncontrolled heatup is not prevented, the heatup would be relatively slow, providing significant time before a radiological

release. In the case of a radiological release, dose rates would be low enough such that significant additional time is available to take offsite actions to protect the public.

The NRC’s analysis of spent fuel decay times provided information on the time required for fuel to heat up to 900 degrees Celsius (C) (*i.e.*, the temperature at which the onset of fission product release is expected for a zirconium fuel cladding fire) as a function of decay time for both pressurized water reactor (PWR) and boiling water reactor (BWR) assemblies. The analysis also included sensitivities to the mass of the racks and the fuel configuration in the SFP. The NRC notes that the decay periods provided for PWRs and BWRs are based on studies that consider current operating parameters in the nuclear power industry (*e.g.*, fuel types, enrichment, and fuel burnup levels). Based on this analysis, the NRC concluded that after a decay period of 10 months for BWRs or 16 months for PWRs, beginning when the reactor permanently shuts down, the spent fuel cannot reasonably heat up to clad ignition temperature within 10 hours after a draindown event. These decay periods are based on an adiabatic heatup to 900 degrees C assuming the decay heat value for the hottest assembly (as opposed to an average assembly), a burnup of 60 gigawatt days per metric ton of heavy metal (GWd/MTHM), and accounting for the mass of the racks. The analysis assumption of 60 GWd/MTHM conservatively bounds current industry burnups and enrichments for zirconium clad fuel and provides margin for potentially higher burnup rates, up to 72 GWd/MTHM. This analysis does not account for the additional time margin that would be provided if additional cooling mechanisms were available or would be provided by a more favorable SFP configuration such that the heat load is more uniformly distributed.

The NRC’s analysis of dose rates shows that even in the event of a beyond-design-basis accident leading to a rapid draindown of the SFP and subsequent zirconium fire, there would be additional time margin on the order of several hours beyond the 10-hour heatup time during which protective actions could be taken to protect the public before the dose levels associated with EPA PAGs would be exceeded offsite.

In addition to the analyses performed by the NRC to support this rulemaking, as discussed in the “Background” section of this document, the conclusions of NUREG–2161 and NUREG–1738 support the technical

basis for a graded approach during decommissioning as they provide insight into the risk of an offsite release and the effectiveness of mitigation measures.

- In NUREG–2161, the NRC considered various spent fuel cooling mechanisms and additional heat from oxidation. Because previous studies found that earthquakes present the dominant risk for SFPs, this analysis considered a severe earthquake with ground motion stronger than the maximum earthquake reasonably expected to occur for the reference plant, which would challenge the SFP integrity. The study considered two spent fuel configurations: High-density and low-density loading. The study also analyzed two cases for each scenario: One that credited the mitigation measures of § 50.54(hh)(2) (*i.e.*, the strategies to maintain or restore SFP cooling in the event of a loss of large areas of the plant as a result of fire or explosion), and one in which those measures were not used or were unsuccessful. The study results showed that successful mitigation reduces the likelihood of a release and that the likelihood of a release was equally low for both high- and low-density loading in the SFP. The study found that a release is not expected to occur at the nuclear power reactor site studied for at least 72 hours following a beyond-design-basis seismic event that occurs more than 60 days after shutdown.

- In NUREG–1738, the NRC presented the results of its evaluation of the potential accident risk for an SFP at a decommissioning nuclear power reactor in the United States. NUREG–1738 identified a zirconium cladding fire resulting from a substantial loss of water from the SFP as the only postulated scenario at a decommissioning nuclear power reactor that could result in a significant radiological release. While highly unlikely, the consequences of such an accident could lead to an offsite dose in excess of the EPA PAGs. Based on spent fuel storage design characteristics and operating practices considered in the analysis, the scenarios that lead to this condition have very low probabilities of occurrence. Accordingly, these scenarios are considered to be beyond the facility's design basis. Furthermore, as the spent fuel ages, the generation of decay heat decreases. After a certain amount of time, the overall risk of a

zirconium fire becomes extremely low because of: (1) The large amount of time available for preventive and mitigating actions and (2) the increased probability that the decay heat will be low enough that the fuel will be air-coolable in the post-event configuration.

H. Levels of Decommissioning

Using the aforementioned analyses as its technical basis, the NRC is proposing to amend its regulations to provide an efficient regulatory framework during decommissioning using a graded approach in several technical areas. This graded approach is commensurate with the reductions in radiological risk at four levels of decommissioning: (Level 1) permanent cessation of operations and permanent removal of all fuel from the reactor vessel, (Level 2) sufficient decay of fuel in the SFP such that it would not reach ignition temperature within 10 hours under adiabatic heatup conditions, (Level 3) transfer of all spent fuel to dry storage, and (Level 4) removal of all fuel from the site. These levels are discussed further as follows:

1. Level 1

Licensees in Level 1 include nuclear power reactor licensees that have docketed certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel pursuant to § 50.82, "Termination of license," or § 52.110, "Termination of license." In this level, a decommissioning nuclear power reactor is defueled and permanently shut down, but the spent fuel in the SFP is still susceptible to a zirconium fuel cladding fire within 10 hours under adiabatic heatup conditions.

2. Level 2

In Level 2, the reactor is defueled and permanently shut down, and spent fuel in the SFP has decayed and cooled sufficiently such that it cannot heat up to the zirconium cladding ignition temperature within 10 hours under adiabatic conditions. The NRC has determined that this condition is reached after spent fuel has decayed for a minimum of either 10 months for a BWR or 16 months for a PWR or an alternative site-specific timeframe to be approved by the NRC. The decay period could begin when the fuel is still in the reactor vessel but the reactor has permanently ceased operations. In order to verify that a licensee has met the

condition, the NRC would rely upon the date of permanent cessation of operation provided by a licensee under § 50.4(b)(8) or § 52.3(b)(8), updated as necessary under § 50.9 or § 52.6, both entitled "Completeness and accuracy of information." Because the identified date of permanent cessation of operations would determine transition from Level 1 to Level 2, the NRC would consider a change in the planned date initially certified to the NRC for permanent cessation of operations to the actual date as information "having a significant implication for public health and safety or common defense and security" under § 50.9 or § 52.6. At this point, the site may also possess a radioactive inventory of liquid radiological waste, radioactive reactor components, and contaminated structural materials. The radioactive inventory may change, depending on the licensee's proposed shutdown activities and schedule.

3. Level 3

In Level 3, all spent nuclear fuel (SNF) is in dry cask storage pursuant to the terms and conditions of a license granted under 10 CFR part 72, including the general license issued in § 72.210. However, the licensee may still hold a 10 CFR part 50 or 10 CFR part 52 license, and the site may contain a radioactive inventory of liquid radiological waste, radioactive reactor components, and contaminated structural materials.

4. Level 4

At this point in the facility's life cycle, all SNF has been removed from the site. The site may possess a radioactive inventory of liquid radiological waste, radioactive reactor components, and contaminated structural materials. The radioactive inventory during this configuration may change, depending on the licensee's proposed decommissioning activities and schedule.

As a facility transitions from being operational to having all SNF in dry cask storage, the proposed rule's regulatory requirements are graded to provide for reasonable assurance of the health and safety of the public commensurate with the risk profile of the facility. Table 2 summarizes the proposed changes to decommissioning requirements in the technical areas that use aspects of this graded approach.

Table 2—Summary of Graded Approach

	Docketing of § 50.82/§ 52.110 certifications	Level 1 occurred and 10 months (BWR) or 16 months (PWR) have elapsed since permanent cessation of operations	All fuel in dry cask storage	All fuel offsite
	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4
Emergency Preparedness	<p>§ 50.54(q)(7)(i): can use § 50.200(a) (PSEP) or § 50.54(q)(2)</p> <p>§ 50.54(q)(8): provisions to change process</p>	<p>§ 50.54(q)(7)(ii): can use § 50.200(b) and § 50.200(c) (PDEP) or § 50.54(q)(2) or § 50.54(q)(7)(i)</p>	<p>§ 50.54(q)(7)(iii): can use § 72.32(a) or § 50.54(q)(2) or § 50.54(q)(7)(i) or § 50.54(q)(7)(ii)</p> <p>§ 50.54(q)(8): change process in § 72.44(f)</p> <p>§ 50.54(t)(3): review of EP program no longer required</p>	<p>§ 50.54(q)(7)(iv): need not comply with requirements of § 50.54(q)</p>
Physical Security	<p>§ 73.55(b), (e), (j), and (p): allow for PSP changes without prior approval</p>		<p>§ 72.212(b)(9)/§ 73.51(a)(2): can change from § 73.55 requirements to § 73.51</p>	
Cyber Security		<p>§ 73.54(l): removal of cyber security requirements</p>		
Onsite/Offsite Insurance		<p>§ 50.54(w)(5): reduction of onsite insurance to \$50 million</p> <p>10 CFR part 140: reduction of offsite insurance to \$100 million</p>		

IV. Scope of the Proposal

This rulemaking proposes revising requirements in 16 technical areas.

A. Emergency Preparedness

1. Introduction

In 1978, an NRC and EPA task force established the planning basis for EP for nuclear power reactor accidents in NUREG-0396, “Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants” (ADAMS Accession No. ML051390356). This guidance provides a basis for offsite radiological EP efforts for large light-water nuclear power reactor facilities. In NUREG-0396, the task force determined that no single accident sequence should be identified as a planning basis and chose to provide recommendations in terms of the consequences and characteristics of accidents that would be important in determining the extent of the planning effort. The task force

concluded that the EP planning basis requires consideration of a spectrum of accidents, informed by probability considerations. The scope of the planning effort was based on three key planning elements: (1) The distance to which planning for the initiation of predetermined protective actions is warranted, (2) the time-dependent characteristics of potential releases and exposures, and (3) the kinds of radioactive materials that can potentially be released to the environment. The risk-informed planning basis for EP, established in NUREG-0396, was endorsed for use in the NRC’s policy statement, “Planning Basis for Emergency Responses to Nuclear Power Reactor Accidents,” dated October 23, 1979 (44 FR 61123). This planning basis results in emergency plans that are effective, regardless of the accident probability.

The rationale in NUREG-0396 and the planning basis elements can also be applied to light water nuclear power reactors in decommissioning to scope

the planning effort. The NRC applied the NUREG-0396 methodology (*i.e.*, consideration of a spectrum of accident consequences and the three key planning elements) to establish a graded approach to EP for decommissioning nuclear power reactors that maintains public health and safety. As discussed in NUREG-0396, no single specific accident sequence should be isolated as the one for which to plan because each accident could have different consequences, both in nature and degree. Further, the range of possible selections for a planning basis is very large, starting with a zero point of requiring no planning at all, because significant offsite radiological accident consequences are unlikely to occur to planning for the worst possible accident regardless of its extremely low likelihood. Fundamentally, the spectrum of possible accidents is significantly smaller and the risk of an offsite radiological release is significantly lower at a nuclear power facility that has permanently shut down

and removed fuel from the reactor vessel than at an operating nuclear power reactor. All such accidents would be associated with hazards based on the storage of spent fuel, either in the SFP or in dry cask storage, until its permanent removal from the site. In NUREG-1738, the NRC found that the event sequences important to risk at decommissioning sites are limited to large earthquakes and cask drop events. For EP assessments, this is an important difference relative to operating nuclear power reactors, where typically a large number of different sequences make significant contributions to risk.

Although the NRC considered the full spectrum of accidents applicable to a decommissioning nuclear power reactor, the number of events that can have significant offsite consequences is greatly reduced, and the events are dominated by the zirconium fire scenario—a postulated, but highly unlikely, beyond-design-basis accident that involves a major loss of water inventory from the SFP, resulting in a significant heatup of the spent fuel and culminating in substantial zirconium cladding oxidation, fire, and fuel damage. The guidance in NUREG-0396 states that while it is not appropriate to develop specific plans for the most severe and most improbable events, the characteristics of these events should be considered “in judging whether emergency plans based primarily on smaller accidents can be expanded to cope with larger events.” This approach provides reasonable assurance that capabilities exist to minimize the impacts of even the most severe events. Consistent with this guidance, the NRC considered the potential impacts of a zirconium fire, even with the assurance that mitigating strategies are in place to prevent an offsite release from occurring for this highly unlikely beyond-design-basis event.

In addition to the three analyses performed by the NRC to support this rulemaking (ADAMS Accession No. ML16110A416), the NRC has previously conducted SFP studies, including NUREG-2161 and NUREG-1738, the conclusions of which support the technical basis for a graded approach to EP. Overall, these analyses: (1) Demonstrate that a period of 10 hours provides sufficient time to implement mitigation measures for design-basis events at decommissioning sites, (2) provide a conservative basis for a spent fuel decay time beyond which the fuel in the SFP can reasonably be expected to take longer than 10 hours to heat up to ignition temperature, and (3) provide additional understanding of the amount of time available for taking action in

response to beyond-design-basis events, including the margin of time that offsite agencies have to decide upon and initiate actions to protect public health and safety. The NRC applied these analyses and the considerations from previous studies of SFP risk to the planning basis elements from NUREG-0396 to develop the proposed regulations for EP at various levels during decommissioning.

2. Graded Approach for Emergency Preparedness

A graded approach to EP has a longstanding regulatory history. The 16 planning standards for operating reactors, outlined in § 50.47(b), and the associated evaluation criteria in NUREG-0654/FEMA-REP-1, Revision 1, “Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,” issued November 1980 (ADAMS Accession No. ML040420012) or Revision 2 issued December 2019 (ADAMS Accession No. ML19347D139), are one part of a continuum of planning standards for radiological EP. The regulations in § 50.47(c)(2) for case-by-case EPZ size determinations; the EP regulations for research and test reactors and other non-power production or utilization facilities, fuel cycle facilities, and ISFSIs; and the EP considerations for small modular reactors and other new technologies (see the Proposed Rule for “Emergency Preparedness for Small Modular Reactors and Other New Technologies” (85 FR 28436 and 85 FR 32308)), are also part of a graded approach to EP that is commensurate with the relative radiological risk, source term, and potential hazards, among other considerations.

Consistent with the concept of a graded approach, the NRC is proposing four levels of emergency planning standards that coincide with the same milestones as the graded approach:

- Post-Shutdown Emergency Plan (PSEP) (Level 1)
 - Permanently Defueled Emergency Plan (PDEP) (Level 2)
- ISFSI-Only Emergency Plan (IOEP) (Level 3)
- No emergency planning (Level 4)

In developing this proposed rule, the NRC considered the appropriateness of the EP requirements in 10 CFR part 50 and 10 CFR part 72 for decommissioning sites, including those requirements that have historically been addressed in approved exemptions and those that have not. The proposed planning standards within the levels are based on the current set of operating

reactor EP standards informed by the analyses and considerations supporting a graded approach to EP as previously described, as well as public comments on the ANPR and on the draft regulatory basis for this rulemaking. The NRC also considered the criteria of safety, implementation costs, efficiency, transparency, flexibility, and responsiveness. The following discussion describes the proposed graded approach to EP.

Post-Shutdown Emergency Plan

For a decommissioning site, once all the fuel is in the SFP, the spectrum of accidents that can have significant offsite consequences is greatly reduced and is dominated by the highly unlikely occurrence of a zirconium fire. The primary consideration for the planning basis for a PSEP is the potential consequences and timing of this narrow spectrum of accidents in relation to the time needed to initiate protective actions.

From a regulatory perspective, the purpose of a PSEP is to provide a transition period to ensure that an appropriate level of EP is maintained onsite and offsite to respond to applicable DBAs and to ensure a prompt response to the highly unlikely rapid draindown of the SFP and subsequent zirconium fire and release occurring in less than 10 hours. A nuclear power reactor licensee would be permitted to transition to a PSEP after the NRC’s docketing of the licensee’s certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel pursuant to §§ 50.82 or 52.110. The NRC anticipates that licensees will maintain a PSEP from the date that the NRC docket the licensee’s certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel, until the spent fuel has decayed for a period of at least 10 months (for BWRs) or 16 months (for PWRs) from the date of permanent cessation of operations, unless a different period is justified. During this time, the licensee would be relieved of the regulatory burden of requirements that are not needed to support an appropriate level of EP as preparations are made to implement a PDEP. The PSEP is a transition period for both onsite and offsite emergency planning in which the regulatory requirements for periodic updates, reviews, and audits that were necessary to support operating reactor EP programs should not interfere with efforts to establish an appropriate level of EP for a PDEP. The NRC does not intend for many significant changes to

occur to the emergency plan while the PSEP is used.

Permanently Defueled Emergency Plan

For plants that have permanently shut down and defueled, the proposed EP approach is based primarily on conditions that: (1) A postulated radiological release would not exceed the EPA early-phase PAGs at the exclusion area boundary for DBAs applicable to a permanently shutdown and defueled reactor, and (2) sufficient time would exist to implement mitigative actions in response to a postulated zirconium fire beyond-design-basis accident scenario in the SFP and, if warranted, for offsite officials to initiate appropriate response actions using all-hazards planning to protect public health and safety. Because of the additional time available to take mitigative actions and, if necessary, to initiate protective actions, many requirements applicable under an operating reactor emergency plan or a PSEP would not be required to protect public health and safety and, therefore, would not be applicable to licensees with sufficiently decayed spent fuel under a PDEP.

The NRC is proposing two regulatory alternatives to specify when the transition to a PDEP may occur: (1) After a specified amount of spent fuel decay time that starts from the date of permanent cessation of operations, or (2) after an alternative timeframe based on a site-specific analysis that shows that the fuel in the SFP cannot heat up to zirconium fuel cladding ignition temperature (900 degrees C) within 10 hours under adiabatic conditions. In either case, a licensee would be permitted to transition to a PDEP only after the NRC's docketing of the licensee's certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel pursuant to § 50.82 or § 52.110. This proposed rule specifies an acceptable decay time to remove the requirement for licensees to provide a site-specific analysis. Licensees are provided the option to submit a site-specific analysis proposing an alternative decay period, but such an analysis would be subject to NRC review and approval before a transition to a PDEP.

Independent Spent Fuel Storage Installation-Only Emergency Plan

The third level of decommissioning under the proposed rule would occur when all spent fuel is removed from the SFP and placed in dry cask storage. At this point, the licensee would have an ISFSI-only emergency plan, or IOEP. A licensee with all of its spent fuel in dry

cask storage that terminates its 10 CFR part 50 or 10 CFR part 52 license must first obtain a specific 10 CFR part 72 license. Accordingly, the licensee would then transition to the EP requirements for dry cask storage in § 72.32, "Emergency Plan." A licensee maintaining its 10 CFR part 50 or 10 CFR part 52 license may opt to change its EP program to align it with the requirements of § 72.32 once all spent fuel is transferred to dry cask storage. These two categories of licensees (*i.e.*, 10 CFR part 72 specific licensees and 10 CFR part 50 or 10 CFR part 52 licensees with ISFSIs licensed under the 10 CFR part 72 general license) would be permitted to adopt an IOEP, consistent with the EP requirements that currently exist under § 72.32(a).

All Spent Fuel Removed From Site

This proposed rule would allow a licensee to terminate its EP program once all the spent fuel has been permanently removed from the site, because the site no longer poses any risk of a radiological release from the spent fuel.

3. Licensee Supporting Analyses

Decommissioning nuclear power reactor licensees submitting requests for exemptions under § 50.12, "Specific exemptions," from EP regulations have performed a series of supporting analyses for NRC review, as described in NSIR/DPR-ISC-02, "Interim Staff Guidance: Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants" (ADAMS Accession No. ML14106A057). To support the exemption requests, these analyses must demonstrate that: (1) Any radiological release for applicable DBAs (*e.g.*, fuel handling accident in the spent fuel storage facility, waste gas system release, and cask handling accident if the cask handling system is not licensed as single-failure-proof) would not exceed the limits of EPA PAGs at the exclusion area boundary, and (2) mitigation strategies and guidelines exist to provide an integrated response capability for beyond-design-basis events. In addition, licensees are required to demonstrate that, in the event of a complete loss of SFP water inventory with no heat loss (adiabatic heatup), a period of at least 10 hours would be available from the time all cooling is lost until any zirconium fuel cladding temperature reaches 900 degrees C.

Under this proposed rule, the NRC would not require licensees to submit these analyses to the NRC for review and approval (separately from existing

NRC oversight processes described later in this document) or to certify that these analyses have been completed to support a change between EP levels. The NRC anticipates that a licensee would analyze applicable DBAs using the process under § 50.59 and reflect the analysis in the licensee's updated FSAR. The NRC expects that licensees have developed and maintained mitigation strategies for beyond-design-basis events as required by NRC Order EA-12-049. For the heatup analysis, the NRC has already performed analyses of representative PWR and BWR spent fuel to determine the decay time necessary for the fuel to remain below clad ignition temperature for at least 10 hours assuming adiabatic heatup conditions. These analyses contain numerous conservatisms, such that the decay times specified in the rule would bound the decay time required for plants with fuel assemblies from the final offload to the spent fuel pool with burnup less than 72 GWd/MTHM and zirconium cladding to attain the 10-hour criterion. This particular analysis supports a transition to PDEP requirements, as previously described. The NRC is proposing an option to allow licensees to develop their own site-specific analysis for this transition time; however, licensees would need to submit such analyses to the NRC for review and approval. This proposed rule details that process.

The following sections describe the proposed EP planning standards and requirements for each graded level of EP (*i.e.*, PSEP, PDEP, and IOEP) under proposed §§ 50.54(q) and 50.200, "Power reactor decommissioning emergency plans." The NRC is issuing draft Regulatory Guide (DG) DG-1346, "Emergency Planning for Decommissioning Nuclear Power Reactors" (ADAMS Accession No. ML21347A046), for public comment with this proposed rule that includes guidance on one method acceptable to the NRC for complying with these proposed requirements. This regulatory guide will supersede NSIR/DPR-ISC-02 upon publication of the final rule. This proposed rule contains a risk-informed, consequence-oriented, graded approach to EP for decommissioning sites that maintains the defense-in-depth philosophy and provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

4. Post-Shutdown Emergency Plans

The NRC is proposing in § 50.54(q)(7) that a licensee can transition to a PSEP after the NRC's docketing of the licensee's certifications of permanent

cessation of operations and permanent removal of all fuel from the reactor vessel pursuant to §§ 50.82(a)(1) or 52.110(a). A PSEP provides a transition period from the EP requirements for an operating reactor to the PDEP requirements under proposed § 50.200(b) and (c). The NRC is proposing regulations under new § 50.200(a) that would clarify how the planning standards in § 50.47(b) and requirements in appendix E to 10 CFR part 50 apply to a nuclear power reactor licensee's PSEP.

PSEP Staffing and Emergency Response Organization

Currently, the following regulations govern the staffing of the emergency response organization (ERO):

- Section 50.47(b)(1), which states, in part, "Primary responsibilities for emergency response by the nuclear facility . . . have been assigned . . . and each principal response organization has staff to respond and to augment its initial response on a continuous basis."

- Section 50.47(b)(2), which states, in part, "[A]dequate staffing to provide initial facility accident response in key functional areas is maintained at all times, timely augmentation of response capabilities is available. . . ."

- Appendix E to 10 CFR part 50, paragraph IV.A, which states, in part, "The organization for coping with radiological emergencies shall be described, including definition of authorities, responsibilities, and duties of individuals assigned to the licensee's emergency organization. . . ."

This proposed rule would allow a licensee transitioning to a PSEP to revisit staffing levels and the staffing analysis for the ERO performed under paragraph IV.A.9 of appendix E to 10 CFR part 50 to align staffing with the reduced spectrum of credible accidents for a permanently shutdown and defueled nuclear power reactor facility. The proposed requirement in § 50.200(a) would acknowledge that the spectrum of credible accidents requiring a response from the ERO at a facility that is permanently shutdown and defueled is reduced as compared to that for an operating plant. The principal public safety concern involves the potential radiological risks associated with the storage of spent fuel on site in the SFP. For example, the reactor, reactor coolant system, and reactor support systems are no longer in operation and have no function related to the storage of spent fuel. Therefore, postulated accidents involving a failure or malfunction of these systems are no longer applicable. As such, certain ERO positions and

emergency functions as detailed in NUREG-0654/FEMA-REP-1, Revision 2, Table B-1, "Emergency Response Organization (ERO) Staffing and Augmentation Plan," may not be applicable or necessary under a PSEP. Commensurate with the reduced spectrum of credible accidents, proposed § 50.200(a) would allow licensees to change ERO staffing levels required by existing § 50.47(b)(2) within their PSEPs. Reductions in facility staffing may be made as long as the facility operates with no loss of necessary EP functions and the reductions have no impact on the formal offsite radiological emergency response plans that are in effect. In conjunction with this proposed rule, the NRC is issuing for public comment DG-1346, which provides guidance on ERO capabilities to be maintained at facilities with PSEPs when reducing staffing levels.

PSEP Emergency Action Levels

Currently, appendix E to 10 CFR part 50, paragraph IV.C requires licensees to develop a set of emergency action levels (EALs) based not only on onsite and offsite radiation monitoring information but also on readings from a number of sensors that indicate a potential emergency, such as the pressure in containment and the response of the emergency core cooling system. This proposed rule would allow licensees transitioning to a PSEP to revise EALs consistent with the profile of a permanently shutdown and defueled nuclear power reactor. Proposed § 50.54(q)(8)(iii) would state that changes to EALs resulting from changes in plant conditions due to the transition to decommissioning would not be reductions in effectiveness provided that the evaluation under § 50.54(q)(3) demonstrates that the changes do not reduce the capability of the licensee to take timely and appropriate protective actions. Given the defueled nature of facilities in decommissioning, EALs associated with nuclear power reactor operations (*e.g.*, reactor vessel water level, core temperature, and containment radiation levels) and EALs for mitigation systems not associated with the SFP would no longer contain applicable initiating conditions. Containment parameters do not indicate the conditions relevant to EP at a defueled facility, and emergency core cooling systems would no longer be required. Other indications such as SFP level or temperature can be used at sites that have spent fuel in the SFPs. Consistent with existing requirements, licensees transitioning to a PSEP would still be required to maintain a set of

EALs based on onsite radiation monitoring information and in-plant conditions and instrumentation applicable to EP for a defueled reactor.

Guidance document NEI 99-01, Revision 6, "Development of Emergency Action Levels for Non-Passive Reactors" (ADAMS Accession No. ML12326A805), provides EALs for non-passive operating nuclear power reactors, permanently defueled reactors, and ISFSIs. The NRC found NEI 99-01, Revision 6, acceptable for use in a letter dated March 28, 2013 (ADAMS Accession No. ML12346A463). To accompany this proposed rule, the NRC drafted guidance in Attachment 1 of Appendix A in DG-1346, for how a permanently shutdown and defueled nuclear power reactor facility could make a partial EAL scheme change. Notwithstanding the proposed changes to § 50.54(q), a licensee desiring to change its entire EAL scheme must receive prior NRC approval in accordance with appendix E to 10 CFR part 50, paragraph IV.B.2.

PSEP Evacuation Time Estimate Studies

Appendix E to 10 CFR part 50, paragraph IV.3 requires licensees to use evacuation time estimates (ETEs) in the formulation of protective action recommendations (PARs) and to provide the ETEs to State and local governmental authorities for use in developing offsite protective action strategies. Licensees must update ETEs on a periodic basis in accordance with the requirements in § 50.47(b)(10) and appendix E to 10 CFR part 50, paragraphs IV.4, IV.5, and IV.6. The periodicity of these updates together with time needed to develop and implement the resulting protective action strategies may exceed the expected transition period covered by PSEPs. Therefore, the NRC is proposing to add a new paragraph IV.8 to appendix E to 10 CFR part 50 to clarify that the ETE requirements of paragraphs IV.4, IV.5, and IV.6 would no longer be applicable to licensees after permanent cessation of operations and permanent removal of fuel from the reactor vessel. Existing ETE analyses would remain effective within the emergency plan until no longer required for licensees with PDEPs.

Under proposed § 50.54(q)(7)(ii), a licensee transitioning to a PSEP would need to maintain a PSEP from the date that the NRC docket the licensee's certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel, until the spent fuel has decayed for a period of at least 10 months (for BWRs) or 16 months (for PWRs) from the date of permanent cessation of operations for

burnups less than 72 GWd/MTHM, unless an alternative spent fuel decay period is proposed by the licensee and approved by the NRC. For fuel with burnups greater than 72 GWd/MTHM or non-zirconium cladding, an alternative spent fuel decay period would be proposed by the licensee for approval by the NRC under § 50.54(q)(7)(ii). Updates to the ETE during this level of decommissioning would provide limited benefit for the enhancement of protective action strategies or offsite evacuation planning. Even if the criteria for updating the ETE analysis were met within the timeframe for a PSEP, updating an ETE report may take several months of analysis. After the ETE is updated, the regulations in appendix E to 10 CFR part 50, paragraph IV.6 require an additional 180 days before an updated ETE can be used to inform PARs and offsite protective action strategies. The additional time and effort needed to develop and implement a revised protective action strategy may exceed the time that a facility would spend with a PSEP before transitioning to a PDEP. Based on the NRC's review of submitted ETEs, population changes within a period comparable to the post-shutdown timeframe are unlikely to impact ETEs enough to affect the formulation of protective action strategies. In addition, because licensees with PDEPs would not be required to have preplanned PARs to provide for a prompt response to a radiological emergency, updates to the ETE post-shutdown would provide no significant benefit.

PSEP Annual Dissemination of Public Information

Appendix E to 10 CFR part 50, paragraph IV.D.2 currently requires licensees to make an annual dissemination of basic emergency planning information to the public within the plume exposure pathway EPZ. Section II.G of NUREG-0654/FEMA-REP-1, Revision 2, contains criteria for the information that should be included in the annual dissemination of public information, including educational information on radiation, points of contact, protective measures, and information for special needs populations. The NRC is not proposing changes related to the requirement for an annual dissemination of public information for a PSEP because the change in the plant's operating status and the ensuing changes to the EP program would be appropriate information to communicate to the public. However, consistent with the removal of regulatory standards for offsite radiological emergency plans for

decommissioning sites (including the removal of EPZ requirements) as discussed later in this document, licensees with PDEPs would not be required to provide annual disseminations of information to the public. In DG-1346, the NRC provides guidance on one method acceptable to the NRC for a final dissemination of information to the public for licensees with PSEPs.

PSEP Hostile Action

In the 2011 final rule, "Enhancements to Emergency Preparedness Regulations" (76 FR 72559; November 23, 2011) (2011 EP Final Rule), the NRC amended its regulations to include enhancements to EP in response to a hostile action event. Appendix E to 10 CFR part 50, paragraph IV.A.7 defines "hostile action" as an act directed toward a nuclear power plant or its personnel that includes the use of violent force to destroy equipment, take hostages, and/or intimidate the licensee to achieve an end. Appendix E to 10 CFR part 50, paragraph IV.B.1 requires nuclear power reactor licensees to have EALs for hostile action, paragraph IV.E.8.d requires nuclear power reactor licensees to have alternative facilities that would be accessible even if the site is under threat of or experiencing hostile action for the staging of ERO personnel, paragraph IV.I requires nuclear power reactor licensees to develop protective actions to protect onsite personnel during hostile action, and paragraph IV.F.2.c.4 and paragraph IV.F.2.i require nuclear power reactor licensees to have hostile action scenarios in drills and exercises. These EP requirements related to hostile action are separate and distinct from the physical protection regulations in 10 CFR part 73, "Physical Protection of Plants and Materials."

The NRC is proposing to maintain EP requirements related to hostile action for nuclear power reactor licensees transitioning to a PSEP. Spent fuel at a nuclear power reactor facility that has a PSEP has not yet undergone a significant period of decay, necessitating the maintenance of formal offsite radiological emergency planning. The potential consequences and timing of an accident are the primary considerations for the EP planning basis at nuclear power reactor facilities transitioning to a PSEP. Although NUREG-1738 did not evaluate the potential consequences of a sabotage event that could directly cause offsite fission production dispersion, the NRC did study the potential consequences of the zirconium fire event at different spent fuel decay times. Within the

timeframe proposed for nuclear power reactor facilities transitioning to a PSEP, the study in NUREG-1738 shows that decay time is significant when considering short-term radiological consequences. Additionally, maintaining EP requirements related to hostile action during this transitional (and time-limited) level of decommissioning would help both the licensee and offsite response organizations (OROs) avoid immediate significant changes to the onsite and offsite emergency plans.

PSEP Drills and Exercises

Current regulations in appendix E to 10 CFR part 50, paragraph IV.F and § 50.47(b)(14) include requirements for periodic drills and exercises for nuclear power reactor licensees. Proposed paragraph IV.F.2.k would require licensees to follow the biennial exercise requirements of appendix E, paragraph IV.F.2 once the NRC docket the licensee's certifications required under § 50.82(a)(1) or § 52.110(a). After the NRC docket this certification, exercise scenarios would be reduced commensurate with the permanent cessation of operations and permanent removal of fuel from the reactor vessel to reflect a smaller suite of potential accident scenarios.

Current regulations in appendix E to 10 CFR part 50, paragraph IV.F.2.c require that offsite radiological emergency plans for each site be exercised biennially with full participation by each offsite authority having a role under the radiological emergency plan. Proposed paragraph IV.F.2.k would provide that biennial exercises of offsite emergency plans would be required after the NRC docket a licensee's certifications under § 50.82(a)(1) or § 52.110(a) until transition to a PDEP.

However, a licensee that conducts a full participation biennial exercise just prior to the NRC docketing the licensee's certifications required under § 50.82(a)(1) or § 52.110(a) may not be required to conduct another exercise before transitioning to a PDEP. If an exercise is conducted as part of the 8-year exercise cycle, as required under appendix E to 10 CFR part 50, paragraph IV.F.2.j, after the NRC docket the licensee's certifications required under § 50.82(a)(1) or § 52.110(a), but prior to transitioning to a PDEP, the scenario would reflect actual plant conditions.

PSEP Emergency Response Data Systems

Appendix E to 10 CFR part 50, section VI, "Emergency Response Data System," outlines a set of system, testing, and

implementation requirements for the emergency response data system (ERDS). These systems transmit near-real-time electronic data directly between the licensee's onsite computer system and the NRC Operations Center. Nuclear power facilities that are shutdown permanently or indefinitely are currently not required to provide hardware to interface with the NRC receiving system under appendix E to 10 CFR part 50, paragraph VI.2, and the NRC is not proposing any regulatory changes to section VI beyond minor corrections (see "*Clean-up of Regulations*" section in this document). Under § 50.72, "Immediate notification requirements for operating nuclear power reactors," licensees with PSEPs would maintain a capability to provide meteorological, radiological, and SFP data (e.g., level, flow, and temperature data) to the NRC within a reasonable timeframe following an event.

5. Permanently Defueled Emergency Plans

Proposed § 50.54(q)(7)(ii) describes the timeframe after which a licensee would be permitted to transition to a PDEP. As discussed in the "*Technical Basis for Graded Approach*" section of this document, the NRC concluded that after a decay period of 10 months (for BWRs) or 16 months (for PWRs), the spent fuel cannot reasonably heat up to the zirconium fuel cladding ignition temperature within 10 hours. Therefore, the NRC is proposing that a licensee can transition to a PDEP after the NRC's docketing of the licensee's certifications of permanent cessation of operations and permanent removal of all fuel from the reactor vessel pursuant to §§ 50.82(a)(1) or 52.110(a) and when at least 10 months (for BWR) or 16 months (for PWR) have elapsed since the date of permanent cessation of operations.

Proposed § 50.54(q)(7)(ii) would also allow licensees to submit an analysis for NRC approval demonstrating that an alternative spent fuel decay period would ensure that spent fuel would not heat up to 900 degrees C in less than 10 hours under adiabatic conditions. Under the proposed rule, licensees would be required to submit this analysis under § 50.90 and the analysis would need to be approved by the NRC in order for a licensee to transition to a PDEP in less than 10 months (for a BWR) or 16 months (for a PWR). While the NRC's research conducted to inform this proposed rule supports a required decay period of 10 months (for BWRs) or 16 months (for PWRs), it is possible that a licensee may be able to demonstrate, based on site-specific conditions, that a shorter decay period would still ensure

that spent fuel cannot reasonably heat up to the zirconium fuel cladding ignition temperature within 10 hours; therefore, the NRC is allowing for the flexibility to submit an alternative decay period under proposed § 50.54(q)(7)(ii). The NRC is issuing DG-1346 for public comment in conjunction with this proposed rule; DG-1346 provides one method acceptable to the NRC for conducting the spent fuel heatup analysis.

As demonstrated in the results of the NRC's task analysis of mitigation actions, "A Human Reliability Analysis of the Spent Fuel in the Spent Fuel Pool of Decommissioning Nuclear Plants" (ADAMS Accession No. ML16110A432), a period of 10 hours will provide sufficient time for plant staff to implement mitigation strategies to prevent spent fuel heatup damage. Additionally, as noted in the NRC's analysis, "Offsite Dose Accumulation Rates Following a Hypothetical Spent Fuel Pool Accident" (ADAMS Accession No. ML16110A430), even in the event of a highly unlikely beyond-design-basis accident leading to a rapid draindown of the SFP and subsequent zirconium fire, there may be an additional time margin of several hours beyond the 10-hour heatup time during which protective actions can be taken to protect the public before the dose levels associated with EPA PAGs would be exceeded offsite. Because of the additional time available to take mitigation actions and, if necessary, to initiate protective actions, many requirements applicable to licensees with PSEPs would not be applicable to licensees with sufficiently decayed spent fuel (i.e., licensees with PDEPs). The following discussion addresses the planning standards under proposed § 50.200(b) and requirements under proposed § 50.200(c) that would be necessary to adequately protect public health and safety at facilities with PDEPs. The proposed requirements for facilities with PDEPs are consistent with the guidance contained in NSIR/DPR-ISC-02.

Offsite Radiological Emergency Response Plans

Currently, § 50.47(b) applies to both onsite and offsite radiological emergency response plans, and appendix E to 10 CFR part 50 includes requirements for emergency plans to address offsite emergency response capabilities (e.g., public alert and notification systems, offsite PAR development, ETEs, and exercises of offsite emergency plans). Under this proposed rule, NRC planning standards would no longer be applied to offsite

radiological emergency response plans for plants with PDEPs.

In its review of several exemption requests, the NRC concluded that as long as a period of at least 10 hours is available to implement mitigation measures or initiate appropriate response actions offsite, formal offsite radiological emergency plans, required under 10 CFR part 50, are not necessary for permanently shutdown and defueled nuclear power reactor licensees with a PDEP. In a hypothetical SFP accident scenario, 10 hours is a conservative estimate of the amount of time available to implement mitigation measures or to take other appropriate response actions. The 10 hours assumes that the spent fuel begins to heat up immediately after the initiating event occurs and does not include the expected amount of time it would take for water to drain from the pool. A beyond-design-basis accident that results in the water draining from the pool (whether a full or partial draindown) would likely take much longer than 10 hours because of the robust construction of the SFP and the large volume of water in the SFP, delaying the onset of heatup. Additionally, 10 hours is a conservative period of time during which preplanned mitigation measures to provide makeup water or spray to the SFP can be implemented reliably before the onset of a zirconium cladding ignition.

If a release is projected to occur, 10 hours would be sufficient time for licensees to notify offsite agencies and for these agencies to initiate appropriate action to protect public health and safety. The NRC concludes that 10 hours provides ample time to take appropriate actions without the extensive preplanning and other requirements of the EP framework for operating plants, and, therefore, regulatory standards for offsite radiological emergency plans would no longer be necessary for the adequate protection of public health and safety. Licensees with PDEPs would still maintain a variety of onsite capabilities that may be available to support OROs in EP and response, including radiological training; regular coordination with OROs; radiological assessment capabilities; memoranda of understanding for firefighting, law enforcement, and ambulance/medical services; and the ability to make PARs upon request. For licensees with PDEPs, no action would be expected or required from State or local government organizations in response to an event at a decommissioning site other than firefighting, law enforcement, and ambulance/medical services. Requirements for licensees to maintain agreements for these services also exist

outside of radiological EP, including the requirement for licensees to maintain a fire protection plan in § 50.48, “Fire protection,” and physical security requirements in 10 CFR part 73. Since the requirements of § 50.47(b) continue to apply to offsite radiological emergency plans during decommissioning, the NRC is proposing to add § 50.47(f) to clarify when the 16 planning standards in § 50.47(b) no longer apply to offsite radiological emergency plans.

PDEP Staffing and Emergency Response Organization

Currently, § 50.47(b)(1) and (2) and paragraph IV.A of appendix E to 10 CFR part 50 require licensees to maintain adequate staffing for initial and augmented response in the case of an emergency and to describe ERO responsibilities in their emergency plans. Further, appendix E to 10 CFR part 50, paragraph IV.A.9 requires licensees to conduct a detailed staffing analysis demonstrating that on-shift personnel assigned emergency plan implementation functions are not assigned responsibilities that would prevent the timely performance of their assigned functions as specified in the emergency plan.

Proposed § 50.200(b)(1), (b)(2), and (c)(1)(i) would include similar staffing requirements for licensees with PDEPs, with the exception of changes made to reflect the small staffing levels required at a decommissioning facility and the removal of formal offsite radiological emergency response requirements for licensees with PDEPs. For example, licensees with PDEPs would not have to comply with the requirement under appendix E to 10 CFR part 50, paragraph IV.A.3 to augment the ERO with staff from licensee headquarters. Because of the much lower risk and much slower progression of events as compared to operating plants, decommissioning sites typically have a level of emergency response that does not require response by headquarters personnel. Licensees would not have to identify State and/or local officials responsible for protective actions, as currently required under appendix E to 10 CFR part 50, paragraph IV.A.8 because offsite emergency measures are limited to onsite support provided by local police, fire departments, and ambulance and hospital services, as appropriate. Proposed § 50.200(c)(1)(i) would require licensees with PDEPs to include in their emergency plans plant staff emergency assignments.

In addition, the staffing analysis required under appendix E to 10 CFR part 50, paragraph IV.A.9 would no

longer apply to licensees with PDEPs. In the 2011 EP Final Rule, the NRC concluded that the staffing analysis requirement was not necessary for non-power reactor licensees because of the small staffing levels required for those facilities. For this same reason, licensees with PDEPs would no longer be required to perform this analysis under the proposed rule.

As licensees transition to a PDEP, staffing levels may be reduced but must remain commensurate with the need to safely store spent fuel at the facility in a manner that is protective of public health and safety. The NRC is issuing DG-1346 for public comment in conjunction with this proposed rule; DG-1346 provides guidance on ERO staffing levels for a PDEP. Licensees with PDEPs would need to be able to augment on-shift capabilities within two hours after declaration of an emergency. The augmented staff would need to include engineering capability appropriate for SFP accident mitigation, but may otherwise be reduced.

Currently, a licensee is required to maintain staffing levels at its technical support center (TSC), operational support center (OSC), and emergency operations facility (EOF). In accordance with NUREG-0696, “Functional Criteria for Emergency Response Facilities” (ADAMS Accession No. ML051390358), a TSC is an onsite facility located close to the control room that provides plant management and technical support to the reactor operating personnel located in the control room during emergency conditions; the OSC is an onsite area separate from the control room and the TSC where licensee operations support personnel will assemble in an emergency; and an EOF is an offsite support facility for the management of overall licensee emergency response (including coordination with Federal, State, and local officials), coordination of radiological and environmental assessments, and determination of recommended public protective actions. Because of the low probability of DBAs or other credible events that would be expected to exceed the EPA PAGs offsite and the available time to implement mitigation measures consistent with plant conditions and, if necessary, to initiate response actions, licensees with PDEPs would not need to maintain the TSC, OSC, and EOF designated staff or dedicated offsite dose assessment field teams.

PDEP Emergency Classification Levels and Emergency Action Levels

Currently, § 50.47(b)(4) and appendix E to 10 CFR part 50, paragraphs IV.B and IV.C specify the EAL and

emergency classification level (ECL) requirements for operating reactors. Similar to § 50.47(b)(4), the proposed PDEP planning standard under § 50.200(b)(4) would require licensees with PDEPs to establish a standard ECL and EAL scheme, the bases of which would include facility system and effluent parameters. The NRC is proposing EAL and ECL requirements for licensees with PDEPs that are analogous to appendix E to 10 CFR part 50, paragraphs IV.B and IV.C with the exceptions of the requirements to base EALs on offsite monitoring information and the appendix E to 10 CFR part 50 paragraph IV.B.1 requirement to include hostile action-based EALs. Because licensees with PDEPs would not be required to maintain formal offsite radiological emergency response plans and “hostile action” does not apply (see discussion in “*PDEP Hostile Action*” and “*Offsite Radiological Emergency Response Plans*” sections in this document), these requirements are no longer relevant to these facilities. However, EALs for security-based events would still be required.

Under proposed § 50.200(c)(1)(ii)(A), licensees with PDEPs would continue to be required to describe in their emergency plans the EALs that are used as a criterion for determining the need for notification and participation of governmental agencies and the EALs that are used for determining when and what protective measures should be considered within the site boundary to protect public health and safety. In addition, licensees with PDEPs would be required to review EALs with State and local governmental authorities on an annual basis. Under proposed § 50.200(c)(1)(iii)(A), licensees with PDEPs would continue to be required to describe in their emergency plans the spectrum of emergency conditions that involve the alerting or activating of the total emergency organization, the communication steps to be taken to alert or activate personnel, EALs for notification of offsite agencies, and the existence of a message authentication scheme. Under proposed § 50.200(c)(1)(ii)(B), a licensee desiring to make an EAL scheme change as part of the PDEP must follow the requirements of appendix E to 10 CFR part 50, paragraph IV.B.2.

For facilities with PDEPs, proposed § 50.200(c)(1)(iii)(A) would specify that only the ECLs of Notification of Unusual Event and Alert would apply (and not the ECLs of Site Area Emergency and General Emergency, which apply to operating reactors). For these facilities, the probability of a condition reaching the level above an emergency

classification of Alert is very low. In the event of an accident at a facility with a PDEP, time will be available to implement mitigation measures consistent with plant conditions. As stated in NUREG-1738, small SFP leaks or loss of cooling scenarios evolve very slowly and generally leave many days for recovery efforts. Offsite radiation monitoring would be performed as the need arises. Because of the low probability of DBAs or other credible events that would reasonably be expected to exceed the EPA PAGs and the available time to implement mitigation measures consistent with plant conditions and, if necessary, to initiate appropriate response actions offsite, facilities with PDEPs would not require declarations of Site Area Emergency and General Emergency and the associated offsite radiation monitoring systems. The results from the NRC's analyses previously discussed support this conclusion.

Consistent with the discussion on PSEPs, EALs for nuclear power reactor operations (e.g., reactor vessel water level, core temperature, and containment radiation levels) and EALs related to mitigation systems not associated with the SFP would no longer be applicable for facilities with PDEPs. The NRC is issuing DG-1346 for public comment in conjunction with this proposed rule; DG-1346 provides one method acceptable to the NRC for EALs for facilities with PDEPs. As discussed previously, proposed § 50.54(q)(8)(iii) describes requirements for decommissioning licensees to conduct reduction in effectiveness determinations for EAL schemes.

PDEP Emergency Assessment, Classification, and Declaration

Currently, appendix E to 10 CFR part 50, paragraph IV.C.2 requires licensees to maintain the capability to assess, classify, and declare an emergency condition within 15 minutes. A decommissioning nuclear power reactor has a low likelihood of a design-basis accident or other credible event resulting in radiological releases requiring offsite protective measures, and the event progression is much slower compared to that for operating reactors. For these reasons, under this proposed rule licensees with PDEPs would not be required to assess, classify, and declare an emergency condition within 15 minutes. Instead, the NRC is proposing under § 50.200(c)(1)(iii)(B) that licensees with PDEPs must document and maintain the capability to assess, classify, and declare an emergency condition as soon as possible and within 60 minutes after the

availability of indications that an EAL has been exceeded and must promptly declare the emergency condition as soon as possible following identification of the appropriate ECL. Similar to the requirements in appendix E to 10 CFR part 50, paragraph IV.C, proposed § 50.200(c)(1)(iii)(B) would clarify that PDEP licensees must not treat the timeframe as a grace period or delay the implementation of response actions. The 60-minute timeframe is commensurate with the slower progression of a credible event resulting in a radiological release requiring offsite protective measures (see discussion of the timeframe for potential releases and mitigation actions at decommissioning sites in the section "*Permanently Defueled Emergency Plans*" in this document).

PDEP Notification Requirement to State and Local Governmental Agencies

Currently, appendix E to 10 CFR part 50, paragraph IV.D.3 requires licensees to have the capability to notify OROs of an emergency declaration within 15 minutes. Under proposed § 50.200(c)(1)(iv)(B), licensees with PDEPs would be required to promptly notify State and local governmental agencies and to make this notification as soon as possible and within 60 minutes after declaring an emergency. The NRC's research and analysis shows that licensees with PDEPs would have sufficient time to implement mitigation measures consistent with plant conditions and, if necessary, for OROs to initiate protective actions offsite. Notifying OROs as soon as possible and within 60 minutes after declaring an emergency would not significantly impact the time available for OROs to initiate appropriate response actions.

PDEP Public Alert and Notification Systems

Currently, appendix E to 10 CFR part 50, paragraph IV.D.3 requires licensees to demonstrate that appropriate governmental authorities have the capability to make a decision on alerting and notifying the public promptly on being informed of an emergency condition. Because of the low probability of DBAs or other credible events that would be expected to exceed the limits of EPA PAGs offsite and the available time for event mitigation, under this proposed rule, the public alert and notification system specified in appendix E to 10 CFR part 50, paragraph IV.D.3 would not be required for licensees with PDEPs. Similarly, exercises of this system, as required under appendix E to 10 CFR part 50, paragraph IV.F.2, would no longer be

required for licensees with PDEPs. As previously discussed, licensees with PDEPs would still be required to maintain the capability to notify responsible State and local governmental agencies within 60 minutes after declaring an emergency, and, based on research and analysis showing that there would be at least 10 hours prior to a zirconium fuel cladding fire for licensees with PDEPs, sufficient time would be available for appropriate governmental authorities to inform the public and initiate protective actions, if necessary. Such actions would be within the capabilities of offsite response organizations and would be similar to actions required for other hazards that do not require a dedicated hazard-specific offsite response capability as is the case for operating reactors.

PDEP Emergency Planning Zones

Currently, § 50.47(b) and (c)(2) require licensees to conduct emergency planning for both the shorter-term plume exposure pathway EPZ (generally 10 miles) and the longer-term ingestion exposure pathway EPZ (generally 50 miles). Appendix E to 10 CFR part 50 contains additional emergency planning requirements for these two types of EPZs. However, the maintenance of the plume exposure pathway and ingestion exposure pathway EPZs for licensees with PDEPs is not warranted because of the low probability of DBAs or other credible events that would be expected to exceed the EPA PAGs off site and the available time to implement mitigation measures. Additionally, if necessary, sufficient time would be available for OROs to initiate appropriate response actions even for a highly unlikely severe accident. Therefore, consistent with the NRC's determination to not require the establishment of formal offsite radiological emergency response plans for licensees with PDEPs, the NRC is proposing to eliminate the requirements that EPZs be maintained for licensees with PDEPs. In other words, the plume exposure pathway EPZ for licensees with PDEPs does not exceed the site area boundary. Consequently, the planning standards for PDEPs under proposed § 50.200(b) and the requirements under proposed § 50.200(c) do not include references to the EPZs.

The NRC is also proposing to add a new paragraph (f) to § 50.47 that would clarify that the planning standards of § 50.47(b) do not apply to offsite radiological emergency response plans if the licensee's emergency plan is not required to meet these planning standards or if the plume exposure

pathway EPZ does not exceed the site area boundary.

PDEP Offsite Radiological Protective Action Recommendations

Currently, § 50.47(b) requires licensees to develop a range of protective actions for the plume exposure pathway EPZ for emergency workers and the public and to give consideration to evacuation, sheltering, and the use of potassium iodide. Licensees also must develop and put in place guidelines for the choice of protective actions during an emergency and develop protective actions for the ingestion exposure pathway EPZ. Proposed § 50.200(b)(10) would require licensees with PDEPs to continue to develop a range of protective actions for emergency workers and the public but, consistent with the removal of regulatory standards for offsite radiological EP for these licensees, would not reference specific offsite protective actions or pre-planned activities for the public in the EPZs. The proposed requirement would call for protective actions directed at emergency workers who may have to respond to the decommissioning site for firefighting, law enforcement, and ambulance/medical services and members of the public present within the owner-controlled area during a radiological emergency.

For licensees with PDEPs, pre-planned offsite protective actions to ensure a prompt response to a radiological emergency on site are not necessary given the time available for OROs to initiate appropriate response actions. Although the likelihood is low for events that would result in doses in excess of the EPA PAGs to the public beyond the owner-controlled area boundary based on the permanently shutdown and defueled status of the reactor, the proposed rule would require licensees with PDEPs to determine the magnitude of and continually assess the impact of a radiological release under proposed § 50.200(c)(1)(ii)(A), and, if a release is occurring, the licensee would be required to communicate that information to offsite authorities as soon as possible for their consideration in taking appropriate response actions under proposed § 50.200(c)(1)(iv)(B).

In 2001, the NRC revised its EP regulations through the “Consideration of Potassium Iodide in Emergency Plans” (66 FR 5427; January 19, 2001) final rule to include the consideration of potassium iodide as a protective measure for the general public to supplement sheltering and evacuation in the unlikely event of a severe nuclear power plant accident with an offsite

radioactive plume that would include radioactive iodine. For licensees with PDEPs, in addition to not needing pre-planned protective action strategies, the iodine in the spent fuel has decayed sufficiently such that there is no need to consider a supplemental potassium iodide program to counteract the effects of radioactive iodine on the thyroid.

PDEP Evacuation Time Estimate Studies

Currently, licensees are required to develop and update ETEs in accordance with the requirements in § 50.47(b) and appendix E to 10 CFR part 50, paragraph IV.3. Paragraph IV.3 requires licensees to use ETEs in the formulation of PARs and to provide ETEs to State and local governmental authorities for use in developing offsite protective action strategies. Because of the low probability of DBAs or other credible events that would be expected to exceed the limits of EPA PAGs offsite and the available time for event mitigation, as well as the minimal expected offsite response required, the proposed rule would not require licensees with PDEPs to maintain ETEs (see section “*PSEP Evacuation Time Estimate Studies*” in this document for additional discussion regarding the need for ETEs post-shutdown).

PDEP Emergency Facilities and Equipment

Currently, appendix E to 10 CFR part 50, paragraph IV.E requires licensees to maintain and describe adequate provisions for emergency facilities and equipment, including equipment at the site for personnel monitoring, equipment for radiological assessment, facilities and supplies for decontaminating onsite individuals, first aid facilities and medical supplies, arrangements for qualified medical service providers and the transportation of contaminated injured individuals, and arrangements for the treatment of individuals injured in support of licensed activities. Decommissioning licensees have not received exemptions or license amendments for these requirements to date, and the NRC has determined that licensees with PSEPs and PDEPs would still need to maintain these capabilities under proposed § 50.200(c)(1)(v). Appendix E to 10 CFR part 50, paragraph VI.E.8 further includes emergency response facility requirements for a TSC, OSC, and EOF.

For licensees with PDEPs, there is no longer a need for separate, dedicated facilities. The functions of the control room, TSC, OSC, and EOF could be combined into one or more locations while still adequately protecting public health and safety. Proposed

§ 50.200(c)(1)(v)(H) would require licensees with PDEPs to establish a facility from which effective direction can be given and effective control can be exercised during an emergency. Because of the low probability of DBAs or other credible events that would be expected to exceed the limits of EPA PAGs offsite and the available time for event mitigation, the significantly reduced staff, and the minimal expected response required, offsite response would not be required at an EOF. Onsite actions may be directed from the control room or other location, without the requirements imposed on a TSC or EOF. Proposed § 50.200(b)(3) would remove reference to the EOF as a location for response. Additionally, under this proposed rule, a separate OSC would no longer be required to meet its original purpose of an assembly area for plant logistical support during an emergency. The OSC function could be incorporated into another facility. The NRC is issuing DG-1346 for public comment in conjunction with this proposed rule; DG-1346 provides one acceptable method for meeting the proposed emergency response facility requirements for PDEPs.

Appendix E to 10 CFR part 50, paragraph IV.E.9 addresses requirements for emergency communications systems, plans, and arrangements, including communications with OROs and between the control room, TSC, and EOF. Proposed § 50.200(c)(1)(v)(I) would require licensees with PDEPs to continue to maintain an onsite and an offsite communications system with backup power and communication plans with arrangements for emergencies. These arrangements would need to include provisions for communications with contiguous State and local governments, Federal emergency response organizations, NRC Headquarters, and the appropriate NRC Regional Office Operations Center. Because licensees with PDEPs may combine emergency response facilities, the current requirements for communication between emergency response facilities would not apply to these licensees. Under the proposed rule, communications with State and local emergency operations centers would be maintained to allow coordination of assistance onsite if required.

PDEP Hostile Action

Under this proposed rule, hostile action requirements would not apply to licensees with PDEPs. The definition of “hostile action” in appendix E to 10 CFR part 50, paragraph IV.A.7 applies

here to the capability of implementing EP during hostile action events. However, in the statement of considerations (SOC) for the 2011 EP Final Rule, the NRC excluded non-power reactors from the definition of "hostile action" because a non-power reactor as defined in § 50.2, "Definitions," is not a nuclear power plant, and a regulatory basis had not been developed to support the inclusion of non-power reactors in the definition of "hostile action." A licensee with a PDEP would be similar to a non-power reactor in that both have a low likelihood of a credible accident resulting in radiological releases requiring response actions offsite. Additionally, regardless of how a disruption to the SFP cooling occurs, the spent fuel would take longer than 10 hours to heat up to ignition temperature, providing adequate time to coordinate a response between the ERO and law enforcement officials. As such, licensees with PDEPs would not fall within the scope of "hostile action," and enhancements to EP in response to hostile action, such as alternative facilities for the staging of ERO personnel, protection of onsite personnel, and challenging drills and exercises involving hostile action, would not be warranted.

Although this rationale justifies the exclusion of licensees with PDEPs from the definition of "hostile action" and its related requirements (including conducting hostile action exercises) as they apply to EP, elements for security-based events would still be maintained for these facilities, including EALs for security-based events. Under the proposed rule, licensees with PDEPs would be required to identify ORO resources that would respond to a security event, and the assistance licensees expect from those resources would be maintained in PDEPs. For physical security, the objective for these facilities relates to protection of the spent fuel against sabotage. A level of security commensurate with the consequences of a sabotage event is required and is evaluated on a site-specific basis. The severity of the consequences declines as fuel ages and thereby removes over time the underlying concern that a sabotage attack, under the current definition, could cause offsite radiological consequences.

PDEP Drills and Exercises

Section 50.47(b)(14) and appendix E to 10 CFR part 50, paragraph IV.F provide training and drill and exercise requirements for nuclear power reactor licensees. Consistent with the language

of § 50.47(b)(14), the proposed PDEP planning standard under § 50.200(b)(14) would require licensees with PDEPs to conduct periodic exercises to evaluate major portions of emergency response capabilities, to conduct periodic drills to develop and maintain key skills, and to correct deficiencies identified as a result of exercises and drills. The NRC is proposing new drill and exercise requirements for licensees with PDEPs under § 50.200(c)(1)(vi) that differ from the existing requirements under appendix E to 10 CFR part 50, paragraph IV.F to account for changes in principal functional areas, offsite radiological emergency response requirements, offsite PAR requirements, and the spectrum of possible accidents.

Similar to the requirements in appendix E to 10 CFR part 50, paragraph IV.F.1, proposed § 50.200(c)(1)(vi)(A) would require licensees with PDEPs to describe in their emergency plan provisions for the training of employees, exercising the emergency plan by conducting periodic drills, and including other individuals in training and drills when those individuals may provide assistance in the event of a radiological emergency. Under the proposed rule, the emergency plan would be required to describe the training to be provided to several categories of emergency personnel, with the exception of licensees' headquarters support personnel. Headquarters support personnel would no longer be required to augment the ERO for licensees with PDEPs. Licensees with PDEPs would need to continue to make available a radiological orientation training program for local services personnel expected to provide support onsite. Because of the time available to coordinate offsite agency notification to the public, licensees with PDEPs would not be required to provide radiological orientation training to local news media persons. Similar to the requirements in appendix E to 10 CFR part 50, paragraph IV.F.2, proposed § 50.200(c)(1)(vi)(B) would require licensees with PDEPs to continue to describe provisions for the conduct of EP exercises that test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communications networks, and ensure emergency organization personnel are familiar with their duties. Licensees with PDEPs would not be required to test the public alert and notification system during their exercises because the system would no longer be required, as discussed previously in this document.

Proposed § 50.200(c)(1)(vi)(B)(1) and (2) would require licensees with PDEPs

to conduct an exercise within two years of the last exercise of the onsite emergency plan conducted under paragraph IV.F.2.b of appendix E to 10 CFR part 50 and to continue to conduct subsequent biennial exercises of onsite emergency plans. Licensees with PDEPs would need to continue to conduct drills during the intervals between biennial exercises involving a combination of principal functional areas. The principal functional areas of emergency response for licensees with PDEPs would include all of the areas currently listed under appendix E to 10 CFR part 50, paragraph IV.F.2.b, with the exception of protective action development and protective action decision making (see discussion on protective action recommendations in the section "*PDEP Offsite Radiological Protective Action Recommendations*" in this document).

Similar to the requirements in appendix E to 10 CFR part 50, paragraph IV.F.2.f, proposed § 50.200(c)(1)(vi)(B)(4) would require licensees with PDEPs to conduct remedial exercises if the emergency plan is not satisfactorily tested during the biennial exercise. Like appendix E to 10 CFR part 50, paragraph IV.F.2.g, proposed § 50.200(c)(1)(vi)(B)(5) would require licensees with PDEPs to provide for formal critiques of exercises, drills, and training that provide performance opportunities to develop, maintain, or demonstrate key skills and to correct weaknesses or deficiencies identified in a critique.

Proposed § 50.200(c)(1)(vi)(B)(6) would require licensees with PDEPs to continue to use drills and exercise scenarios that provide reasonable assurance that anticipatory responses will not result from preconditioning of participants and that emphasize coordination among onsite and offsite response organizations. Unlike the current requirements under appendix E to 10 CFR part 50, paragraphs IV.F.2.b, IV.F.2.i, and IV.F.2.j, licensees with PDEPs would not be required to submit exercise scenarios 60 days before use in an exercise, demonstrate that exercise scenarios include a wide spectrum of radiological releases and events, or vary exercise scenarios across an eight calendar year exercise cycle to allow for the demonstration of responses to specified scenario elements, respectively. These requirements would no longer apply due to the limited types of events that could occur. The previously routine progression to a General Emergency, or even a Site Area Emergency, in nuclear power reactor site scenarios is not applicable for licensees with PDEPs.

The NRC is issuing DG–1346 for public comment in conjunction with this proposed rule; DG–1346 provides one method acceptable to the NRC for licensees with PDEPs to comply with the proposed drill and exercise requirements.

PDEP Offsite Response Organization Participation in Drills and Exercises

Appendix E to 10 CFR part 50, paragraph IV.F and § 50.47(b)(14) include requirements for periodic EP drills and exercises for licensees. Appendix E to 10 CFR part 50, paragraphs IV.F.2.c and IV.F.2.d requires offsite radiological emergency plans for each site to be exercised biennially with full participation by offsite authorities having a role under the radiological response plan. Appendix E to 10 CFR part 50, paragraphs IV.F.2.f and IV.F.2.h address State and local participation in remedial exercises and refusal of State and local governments to participate. Because no action is required from State and local government organizations in response to events other than firefighting, law enforcement, and ambulance/medical services, the requirements related to ORO participation in radiological drills and exercises would no longer be applicable to licensees with PDEPs. Proposed § 50.200(c)(1)(vi)(B) would remove the requirement to exercise offsite emergency plans once the NRC has docketed the licensee's certifications required under § 50.82(a)(1) or § 52.110(a) and the licensee elects under § 50.54(q)(7)(ii) to transition to a PDEP. For facilities that are located either on the same site or on adjacent contiguous sites to reactors that continue to operate, the offsite emergency plans would continue to be exercised as required under appendix E to 10 CFR part 50, paragraph IV.2.f, until all reactors at the site cease operation and transition to a PDEP. Similar to the requirements under appendix E to 10 CFR part 50, paragraph IV.2.f.e, under proposed § 50.200(c)(1)(vi)(B)(3), a licensee with a PDEP would be required to enable any State or local government to participate in the licensee's drills and exercises when requested.

6. Independent Spent Fuel Storage Installation-Only Emergency Plans

In order to transition to an IOEP, the NRC is proposing under § 50.54(q)(7)(iii) that licensees must have all spent fuel in dry cask storage. Licensees with an IOEP must follow and maintain the effectiveness of an emergency plan that meets the requirements in § 72.32(a).

Licensees with 10 CFR part 72 specific licenses or under the 10 CFR part 72 general license may hold an IOEP. A licensee with all of its spent fuel in dry cask storage that terminates its 10 CFR part 50 or 10 CFR part 52 license must first obtain a 10 CFR part 72 specific license before transitioning to the EP requirements already provided in § 72.32(a). A licensee maintaining its 10 CFR part 50 or 10 CFR part 52 license, and thus its 10 CFR part 72 general license authorized under § 72.210, "General license issued," may opt to change its EP program to align it with the requirements of § 72.32 once all spent fuel is transferred to dry cask storage. In addition, licensees under the 10 CFR part 72 general license would need to continue to comply with all applicable 10 CFR part 50 and 10 CFR part 52 requirements until the 10 CFR part 50 or 10 CFR part 52 license is terminated consistent with § 50.82 or § 52.110, respectively.

Under proposed § 50.54(q)(7)(iii), a licensee may choose not to comply with the EP requirements under § 72.32 and may instead maintain a PSEP or PDEP. Licensees with dry cask storage must ensure that the emergency plan includes an appropriate EAL scheme.

The NRC is issuing DG–1346 for public comment in conjunction with this proposed rule; DG–1346 provides guidance on transitioning to and maintaining an IOEP.

7. All Spent Fuel Removed From Site

During the fourth level of decommissioning, the proposed rule would allow a licensee to terminate its EP program under proposed § 50.54(q)(7)(iv) or proposed § 72.44(f). Once all spent fuel has been permanently removed from the site, the site no longer poses any risk of a radiological release. The licensee must then continue to follow its PSDAR submitted under § 50.82 until decommissioning is completed.

8. Changes to Emergency Plans

Existing § 50.54(q)(2) requires nuclear power reactor licensees to follow and maintain the effectiveness of an emergency plan that meets the planning standards in § 50.47(b) and the requirements in appendix E to 10 CFR part 50. In addition, § 50.54(q)(3) contains the conditions under which the licensee may make changes to its emergency plan without prior application to and approval by the NRC, provided that the changes do not reduce the effectiveness of the plan and that the plan, as changed, continues to meet the standards in § 50.47(b) and the requirements in appendix E to 10 CFR

part 50. The NRC is proposing to add several new paragraphs that, similar to § 50.54(q)(2) and (3), would reference the requirements that emergency plans for decommissioning nuclear power reactors must meet and the process for making these plan changes. In particular, proposed § 50.54(q)(7) would reference the applicable emergency plan requirements after the NRC docketed a licensee's certifications under § 50.82(a)(1) or § 52.110(a), and proposed § 50.54(q)(8) would stipulate the conditions under which decommissioning nuclear power reactor licensees may make changes to their emergency plans without prior approval by the NRC. The NRC also would revise § 50.54(q)(1) to clarify that the definitions in paragraph (q) apply to only paragraph (q).

The existing change process under § 50.54(q) does not establish whether a proposed change would impact the agency's determination that there is reasonable assurance that a licensee can and will take adequate protective measures in the event of a radiological emergency; the change process establishes only whether the licensee has the authority to implement the proposed change without prior NRC approval. The change process uses the characteristic "reduction in effectiveness" to exclude from the requirement to seek prior NRC approval those changes that would likely not reduce the effectiveness of the licensee's emergency plan. Because these changes would not reduce the effectiveness of the plan, the NRC expects that the changes should not have an impact on the agency's reasonable assurance determination. A licensee's determination that a proposed change would reduce the effectiveness of the emergency plan does not mean that the licensee could not or would not implement adequate protective measures to protect public health and safety in the event of a radiological accident, but only that prior NRC review is required to evaluate the impact of the change on the reasonable assurance determination. As part of routine oversight, the NRC screens emergency plan changes, including EAL changes, and reviews a sample of changes documented in reports submitted under § 50.54(q)(5) that could potentially reduce effectiveness. These reviews do not constitute the NRC's approval of the plan changes, and all such changes remain subject to future inspection and enforcement actions. The NRC documents its approval of plan changes under § 50.54(q)(4) in its decisions to grant license amendment requests.

The licensee cannot properly evaluate a proposed change to the emergency plan if it has not considered the basis for the NRC's approval of the original plan or the basis for any subsequent changes to the plan—whether those changes were approved by the NRC or implemented by the licensee without prior NRC approval under § 50.54(q). Regulatory Guide (RG) 1.219, Revision 1, “Guidance on Making Changes to Emergency Plans for Nuclear Power Reactors” (ADAMS Accession No. ML16061A104), describes a method that the NRC considers acceptable to implement the requirements in § 50.54(q) as they relate to EP and specifically to making changes to emergency response plans. As provided in RG 1.219, the licensee should consider its licensing basis to inform a § 50.54(q) evaluation, and, principally, applicable regulatory requirements, which are binding on the licensee unless the NRC explicitly exempts the licensee from them. The NRC is issuing DG-1346 for public comment in conjunction with this proposed rule to provide guidance for decommissioning nuclear power reactors in evaluating changes to emergency plans under proposed § 50.54(q).

The change process is meant to ensure that emergency plans are maintained up to date and that the level of planning does not fall below the standards to which the licensee has committed. The regulations in § 50.54(q) define “reduction in effectiveness” as a change in an emergency plan that results in reducing the licensee's capability to perform an emergency planning function in the event of a radiological emergency. “Emergency planning function” is currently defined as a capability or resource necessary to prepare for, and respond to, a radiological emergency, as established in the planning standards of § 50.47(b) and the elements of appendix E to 10 CFR part 50, section IV. The NRC is proposing to remove the references to the planning standards of § 50.47(b) and appendix E to 10 CFR part 50 from this definition because this proposed rule would establish alternative emergency planning standards under proposed § 50.200, and the NRC does not consider the references essential to the definition.

When the NRC considers exemptions from EP requirements for a decommissioning nuclear power reactor licensee, the NRC considers whether there are special circumstances present as defined in § 50.12(a)(2). In particular, the NRC determines whether application of the EP regulations for which exemptions are under consideration in the particular

circumstances would not serve their underlying purpose or are not necessary to achieve their underlying purpose, which is to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Once the NRC grants a licensee exemptions from EP requirements, the exempted regulations no longer apply to the licensee. The licensee may need to submit a separate license amendment request if the planned changes conflict with an element of the current licensing basis. If not, the licensee need not submit a separate license amendment request for NRC approval of the emergency plan changes unless the plan changes go beyond those resulting from the exemptions granted. The NRC intends that this proposed rule would establish clear regulatory requirements for EP, reducing the need to request certain exemptions. As such, the NRC is proposing to add § 50.54(q)(8) to establish the process for: (1) Transitions from one decommissioning level's EP planning standards and requirements to the next level's EP planning standards and requirements, and (2) changes to emergency plans within a decommissioning level.

In considering a graded approach to EP, the NRC recognizes that a transition between the EP planning standards and requirements of each decommissioning level is not equivalent to making changes to the emergency plan within a level. The transition between the EP planning standards and requirements of each decommissioning level is fundamentally a licensee's commitment to a different set of EP standards and associated emergency planning functions, and the change process should facilitate this transition.

For transitions from one decommissioning level to the next, the NRC would require licensees to establish emergency plans that meet the EP planning standards and requirements of the next level. The transition is optional, and a licensee that maintains its current level of emergency planning would satisfy the requirements of the next level; however, doing so would mean maintaining emergency planning functions above the commensurate level of planning for the risk involved. Under the proposed § 50.54(q)(8), a licensee would be able to make changes to the emergency plan to commit to the EP planning standards and requirements of the next decommissioning level (*i.e.*, PSEP, PDEP, or IOEP) using the § 50.54(q)(3) change process, but would only need to consider whether the changes meet the next level's planning standards and requirements. Licensees

making changes to their emergency plans to commit to the EP planning standards and requirements of a decommissioning level would not be required to determine if the changes are reductions in effectiveness. Instead, the NRC would have already made this determination through its issuance of the regulations promulgating the EP planning standards and requirements of the decommissioning levels. The NRC's proposed regulatory approach to transitions between EP decommissioning levels does not go beyond the authority currently granted to licensees to make changes to their emergency plan under § 50.54(q)(3). Additionally, any change to the emergency plan that is not made to comply with the EP planning standards and requirements of the next decommissioning level would require a licensee to make a determination as to whether the change would be a reduction in effectiveness.

After the Three Mile Island accident in 1979, the NRC issued a final rule (45 FR 55402; August 19, 1980) (1980 EP Final Rule) that included § 50.54(u), which required licensees to upgrade their emergency plans to meet the then-new planning standards of § 50.47(b) and requirements in appendix E to 10 CFR part 50 and to submit those plans to the NRC. In the 2011 EP Final Rule, the NRC removed and reserved § 50.54(u). The NRC's proposed approach to transitions between EP planning standards and requirements of decommissioning levels is analogous to the approach taken by the NRC when the 16 EP planning standards went into effect in 1980 (see “*Reasonable Assurance and Offsite Radiological Emergency Preparedness*” section in this document). Under this approach, the NRC would not be relinquishing its oversight authority, as some commenters on the ANPR and draft regulatory basis supposed. As proposed, § 50.54(q)(8)(i) would require initial emergency plan changes made to transition between EP decommissioning levels to be submitted to the NRC at least 60 days prior to implementation, and emergency plans would remain subject to future inspection and enforcement. The proposed submittal is not intended to be a licensing action. It would provide a current copy of the emergency plan to the NRC prior to implementation in support of future inspection activities. This submittal would provide an opportunity for the NRC to assure that the licensee maintains the effectiveness of its emergency plan. Subsequent emergency plan changes would need to follow the

existing change control process under § 50.54(q)(3) and (4). Hearing rights would not attach to transitions between EP decommissioning levels; however, the public has the opportunity to comment on the graded EP planning standards and requirements themselves in response to this proposed rule and the drafts of the supporting guidance documents. In addition, all emergency plan changes submitted under § 50.54(q)(5) and proposed § 50.54(q)(8) would be publicly available.

In addition to the general requirements in proposed § 50.54(q)(8)(i) governing transitions between EP decommissioning levels, proposed § 50.54(q)(8) would address changes specific to SSCs and EALs. Proposed § 50.54(q)(8)(ii) would specify that, for SSCs that are no longer needed to provide support for an emergency planning function (as defined under proposed § 50.54(q)(1)(iii)), a licensee may make a determination under § 50.54(q)(3) that emergency plan changes are not a reduction in effectiveness if the updated FSAR demonstrates that these SSCs are no longer required to be in service due to the decommissioning status of the facility. Proposed § 50.54(q)(8)(iii) would state that changes to EALs based on plant conditions that are not physically achievable or instrumentation that is no longer in service due to the transition to decommissioning are not reductions in effectiveness provided that a § 50.54(q)(3) evaluation demonstrates that the change does not reduce the capability of taking timely and appropriate protective actions. The NRC is proposing these requirements to provide clarity on § 50.54(q)(3) evaluations and alleviate the burden on licensees from submitting emergency plan changes that result from SSCs and instrumentation that are no longer required to be in service due to decommissioning.

After the implementation of a PSEP, PDEP, or IOEP, licensees would be required by proposed § 50.54(q)(7)(i) to continue to follow and maintain the effectiveness of the plan and by proposed § 50.54(q)(8)(i)–(iii) to comply with the change process described under existing § 50.54(q)(3) and (q)(4). Therefore, licensees would be allowed to make changes to these emergency plans without prior application to and approval by the NRC, provided that the changes would not reduce the effectiveness of the plan and that the plan, as changed, would continue to meet the EP planning standards and requirements for the applicable decommissioning level. Current

§ 50.54(q)(5) would require decommissioning licensees to submit to the NRC a report of each such change within 30 days after the change is put into effect. And, consistent with current requirements, decommissioning licensees would have to submit changes that would reduce the effectiveness of the plan for prior NRC review and approval in accordance with § 50.54(q)(4) so that the NRC could make the requisite reasonable assurance determination. For subsequent emergency plan changes once all fuel is in dry cask storage (*i.e.*, for changes to an IOEP), proposed § 50.54(q)(8)(i) would allow licensees to follow the change process under § 72.44(f).

The proposed amendments to the regulatory change process are necessary because:

- The regulation in existing § 50.54(q)(2), which provides that a licensee must follow and maintain the effectiveness of the emergency plan, should continue to apply in order to ensure that emergency plans are followed and kept up to date.
- The existing § 50.54(q) change process and the associated regulatory guidance currently do not address how a licensee could change its emergency plans to comply with the emergency plan standards as the licensee transitions to each level of decommissioning.
- This proposed rule would allow the NRC to maintain, through a regulatory change process, reasonable assurance that a licensee can and will take adequate protective measures in the event of a radiological emergency.

The proposed amendments to § 50.54(q), and related regulatory guidance, would ensure that licensees would maintain the effectiveness of the emergency plans. Emergency plans that comply with the proposed graded EP planning standards and requirements would continue to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Any plan that did not meet these standards and requirements and, if applicable, the reduction in effectiveness criterion, would be subject to inspection and enforcement actions. The proposed approaches to transitioning between EP decommissioning levels and to making emergency plan changes within decommissioning levels would provide an efficient and effective regulatory change process and would promote consistent and predictable implementation and enforcement.

9. Program Element Review Under § 50.54(t)

Under current § 50.54(t), licensees must conduct reviews of EP program elements either: (1) At intervals not to exceed 12 months or (2) as necessary, based on an assessment by the licensee against performance indicators and as soon as reasonably practicable after a change occurs in personnel, procedures, equipment, or facilities that potentially could adversely affect EP. If a licensee chooses the second option, it must still review all program elements at least once every 24 months. For several reasons, the proposed rule would provide decommissioning licensees with an alternative approach to reviewing EP program elements.

First, the NRC expects licensees to remain in the first level of decommissioning (*i.e.*, with a PSEP) for less than 24 months, and the scope of a PSEP is largely unchanged from the scope of an operating reactor's emergency plan. Conversely, the second level of decommissioning (*i.e.*, licensees with a PDEP) will involve more significant changes, and the NRC anticipates that licensees would remain in the second level of decommissioning for a longer period of time. Therefore, in order to support program continuity and minimize changes during the transition to a PDEP, the NRC is proposing to amend § 50.54(t) such that, starting after licensees enter the second level of decommissioning, licensees would be able to conduct program element reviews under § 50.54(t) at intervals not to exceed 24 months (rather than 12 months) without conducting an assessment against performance indicators. The NRC is proposing to add new § 50.54(t)(3) to remove the requirement to conduct periodic EP program element reviews once all fuel is in dry cask storage (*i.e.*, the third/IOEP level of decommissioning), consistent with the EP requirements for ISFSIs under 10 CFR part 72.

10. Reasonable Assurance and Offsite Radiological Emergency Preparedness

The regulations in §§ 50.47 and 50.54, "Conditions of licenses," prescribe how the NRC will make licensing decisions or take appropriate enforcement actions by using findings of reasonable assurance that adequate protective measures can and will be taken to protect public health and safety in the event of a radiological emergency. Every 10 CFR part 50 or 10 CFR part 52 license includes as a condition of the license the requirements of § 50.54(s)(2)(ii) and (s)(3) regarding findings and determinations of reasonable assurance.

The NRC has the authority and responsibility to make licensing findings on the overall adequacy of onsite and offsite emergency planning and preparedness. Commensurate with the NRC's responsibility to make such findings, the NRC has the authority to collect, review, and evaluate any information it needs to support its findings on EP. If available, the NRC must consider FEMA findings and determinations regarding the status of offsite EP. The relationship between the NRC and FEMA concerning findings of reasonable assurance of offsite EP is based on the Atomic Energy Act of 1954, as amended (AEA); the Energy Reorganization Act of 1974, as amended; the NRC Authorization Act for Fiscal Year 1980, the NRC's regulations; a memorandum of understanding between the two agencies ("Memorandum of Understanding Between the Department of Homeland Security/Federal Emergency Management Agency and Nuclear Regulatory Commission Regarding Radiological Emergency Response, Planning, and Preparedness") first established in 1980 and last updated in 2015 (ADAMS Accession No. ML15344A371); and case law (e.g., *Massachusetts v. United States*, 856 F.2d 378, 382 (1st Cir. 1988); *State of Ohio ex rel. Celebrezze v. NRC*, 868 F.2d 810, 815–16 (6th Cir. 1989)).

Not all licensing decisions involving EP require findings and determinations on the adequacy of offsite plans. In the EP regulations for research and test reactors, fuel cycle facilities, and ISFSIs, there are no regulatory standards or requirements for offsite radiological emergency plans. As such, FEMA findings and determinations are not needed to support NRC licensing decisions for such facilities. The absence of NRC regulatory standards for offsite radiological EP at those facilities does not imply that offsite emergency planning, in general, is not adequate to protect the public health and safety. In addition, the support provided by offsite organizations does not automatically necessitate the need for findings and determinations. In the Low Power Rule (47 FR 30232; July 13, 1982), the NRC concluded that findings and determinations on the state of offsite EP were not needed to support issuance of a license for fuel loading and low-power testing because there was sufficient time (at least 10 hours) in which to take action to protect the public in even the worst-case accident. Additionally, the NRC has concluded in its review of several EP exemption requests for permanently shutdown and defueled

nuclear power reactor licensees that formal offsite radiological emergency plans are not necessary after the spent fuel in the SFP has sufficiently decayed such that it would not reach zirconium fuel cladding ignition temperature within 10 hours under adiabatic heatup conditions. As a result, continued consultation with FEMA regarding the adequacy of the offsite plans was also no longer necessary.

For decommissioning nuclear power reactors, the NRC is proposing that if regulatory standards for offsite radiological EP are not required, then findings and determinations on the adequacy of offsite plans would not be needed in order for the NRC to make determinations regarding reasonable assurance under § 50.54(s)(2)(ii). Therefore, the NRC is proposing changes to § 50.54(s)(3) to clarify that FEMA findings and determinations are only necessary when the NRC's planning standards apply to offsite radiological emergency response plans. Additionally, the NRC staff is proposing to add a new § 50.47(f) to clarify when the 16 planning standards apply to offsite radiological emergency plans. A licensee must follow and maintain the effectiveness of its emergency plan if the NRC is to continue to find, under § 50.54(s)(2)(ii), that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, and § 50.54(s)(2)(ii) would continue to apply to licensees as a condition of the license during decommissioning.

In 1979, the NRC predicated the rationale for the EP proposed rule (44 FR 75167; December 19, 1979) on the Commission's considered judgment in the aftermath of the accident at Three Mile Island. At the time, the Commission concluded that it must be in a position to know that offsite governmental plans had been reviewed and found adequate. However, the Commission also noted that the proposed rule was considered an interim upgrade of NRC emergency planning regulations based on past experience, and that further changes to emergency planning regulations may be proposed as more experience is gained. The NRC viewed the 1979 proposed rule as a first step in improving emergency planning.

The NRC recognizes the experience gained from implementing its regulations and also that significant advances in emergency planning have occurred over the decades following the accident at Three Mile Island. In particular, the terrorist attacks on September 11, 2001, led to the establishment of the U.S. Department of

Homeland Security, and lessons learned from disasters such as Hurricane Katrina have resulted in a national effort to prepare for and respond to all hazards and disasters. Homeland Security Presidential Directive 5, "Management of Domestic Incidents" (February 28, 2003), and Presidential Policy Directive (PPD)–8, "National Preparedness" (issued March 30, 2011), established national initiatives for a common approach to preparedness and response. These initiatives include the National Incident Management System, National Preparedness Goal, Core Capabilities, National Preparedness System, National Planning Frameworks, and the development of comprehensive preparedness guides and exercise methodologies.

The PPD–8 directed the development of a national preparedness goal that identifies the core capabilities necessary for preparedness and a national preparedness system to guide activities that will enable the nation to achieve the goal. Core capabilities are intended to help coordinate and unify efforts, improve training and exercise programs, promote innovation, and ensure that the administrative, finance, and logistics systems are in place to support these capabilities. The PPD–8 is aimed at facilitating an integrated, all-of-nation, capabilities-based approach to preparedness, under the assumption that national preparedness is the shared responsibility of the "whole community," which includes all levels of government, the private and nonprofit sectors, and individual citizens. Acknowledging the national preparedness goal, the NRC maintains the sole legal authority to establish any regulations it deems necessary to ensure the adequate protection of public health and safety from radiological events.

For a decommissioning site, the licensee, as part of the whole community, will maintain radiological EP capabilities. Only in the highly unlikely event of a zirconium fire—in which mitigation actions were not successful—would there be a potential need to initiate response actions offsite. But unlike the EP planning basis for an operating reactor, within a few months of cessation of operations, there is no longer a potential need to provide for prompt protective actions in the event of an accident. Additionally, protective actions such as evacuation are not unique to radiological events and occur in response to other unique hazards such as chemical spills, fires, and natural disasters, and are often initiated without any pre-planning. In NUREG–0396, the NRC states that "It has been, and continues to be the Federal position

that it is possible (but exceedingly improbable) that accidents could occur calling for additional resources beyond those that are identified in specific emergency plans developed to support specific individual nuclear facilities. Further, the NRC and Federal position has been and continues to be, that as in other disaster situations, additional resources would be mobilized by State and Federal agencies.”

State and local governments are responsible for the protection of public health and safety (including at industrial sites like decommissioning reactors), and the NRC has high confidence in the ability of OROs to implement appropriate response actions when necessary. This confidence is further strengthened by the NRC’s recognition of national-level efforts, in which the NRC participates, to improve the state of emergency planning at all levels of government and within the whole community. Consequently, for facilities licensed by the NRC where radiological hazards are unlikely to have an offsite impact, the risk posed by the remaining low-level hazard is somewhat analogous to that posed by non-nuclear hazards (e.g., train derailments or oil spills) that are addressed by all-hazards planning and not by a separate radiological emergency plan. In such conditions, there is reasonable assurance that appropriate response actions can and will be taken in the event of a radiological emergency, without the need for regulatory standards for offsite radiological emergency response plans and the associated FEMA findings and determinations that offsite plans are adequate and can be implemented.

11. Clean-Up of Regulations

The NRC is proposing to remove obsolete dates for certain one-time actions that were required as part of the 2011 EP Final Rule and other obsolete dates. These actions are complete, and the requirements are no longer binding on any current licensee. The dates of requirements proposed to be removed are:

(1) Section 50.54(s)(2)(ii), which allows the NRC to shut down nuclear power reactors that did not provide reasonable assurance that adequate protective measures would be taken in the event of a radiological emergency after April 1, 1981. There is no longer a need for the date requirement of this provision because any future determinations made under § 50.54(s) will be after April 1, 1981. The NRC is proposing to delete “after April 1, 1981” and retain the remainder of the provision.

(2) Paragraph 6 of appendix E to 10 CFR part 50, section I, which was used to promulgate specific compliance dates for the Tennessee Valley Authority Watts Bar Nuclear Plant that was under construction at the time of the 2011 EP Final Rule. Because the Watts Bar Nuclear Plant is now operational and subject to all current requirements for operating reactors, the NRC is proposing to delete this provision.

(3) Appendix E to 10 CFR part 50, paragraph IV.4, which required nuclear power licensees to develop an ETE analysis using decennial data published within 365 days of the later date of the most recent decennial data or December 23, 2011. There is no longer a need for the date requirement of this provision because the date has expired. The NRC is proposing to delete “of the later of the date of” and “or December 23, 2011” from this provision.

(4) Appendix E to 10 CFR part 50, paragraph IV.A.7, which required licensees to identify and describe the expected assistance from appropriate local, State, and Federal agencies during an emergency, including a hostile act, by June 23, 2014. The NRC is proposing to delete “by June 23, 2014” from this provision because the date has expired.

(5) Appendix E to 10 CFR part 50, paragraph IV.A.9, which required licensees to conduct a detailed analysis by December 24, 2012, demonstrating that on-shift personnel are not assigned responsibilities that would prevent the timely performance of assigned functions in the emergency plan. The NRC is proposing to delete “By December 24, 2012” from this provision because the date has expired.

(6) Appendix E to 10 CFR part 50, paragraph IV.B.1, which required licensees, by June 20, 2012, to establish EALs that include hostile action that may adversely affect the nuclear power plant. There is no longer a need for the date requirement of this provision because the date has expired. The NRC is proposing to remove “By June 20, 2012” and retain the remainder of the provision.

(7) Appendix E to 10 CFR part 50, paragraph IV.C.2, which required licensees, by June 20, 2012, to establish and maintain capability to assess, classify, and declare an emergency condition within 15 minutes after indications that an EAL had been exceeded. There is no longer a need for the date requirement of this provision as the date has expired. The NRC is proposing to delete “By June 20, 2012” and retain the remainder of the provision.

(8) Appendix E to 10 CFR part 50, paragraph D.4, which included

compliance periods for the backup alert and notification capability requirements under appendix E to 10 CFR part 50, paragraph D.3, including a final deadline of June 22, 2015. The NRC is proposing to remove this paragraph because the dates in the paragraph have expired, and any future applicants required to comply with appendix E to 10 CFR part 50 would be required to comply with the requirements of appendix E to 10 CFR part 50, paragraph D.3.

(9) Appendix E to 10 CFR part 50, paragraph IV.E.8.c, which required licensees’ EOFs to have the capabilities required under the section by June 20, 2012. Because the date requirement of this provision has expired, the NRC is proposing to delete “By June 20, 2012” from this provision.

(10) Appendix E to 10 CFR part 50, paragraph IV.E.8.d, which required licensees to identify an alternative facility that would be accessible in the event of hostile action by December 23, 2014, with the exception of the capability for staging ERO personnel at the alternative facility and communications capabilities with emergency response facilities, which had to be implemented by June 20, 2012. There is no longer a need for the date requirements of this provision as the dates have expired. The NRC is proposing to delete the deadlines for the implementation of this provision.

(11) Appendix E to 10 CFR part 50, paragraph IV.F.2.d, which required licensees to fully participate in one hostile action by December 31, 2015. Because the date requirement of this provision has expired, the NRC is proposing to delete “and should fully participate in one hostile action exercise by December 31, 2015” from this provision.

(12) Appendix E to 10 CFR part 50, paragraph IV.F.2.j, which required licensees to conduct a hostile action exercise for each of their sites no later than December 31, 2015. Because the date requirement of this provision has expired, the NRC is proposing to delete the requirement from this provision.

(13) Appendix E to 10 CFR part 50, paragraph IV.I, which required licensees, by June 20, 2012, to provide a range of protective actions to protect onsite personnel during hostile action. Because the date requirement of this provision has expired, the NRC is proposing to delete “By June 20, 2012” from this provision.

(14) Appendix E to 10 CFR part 50, paragraph VI.4.a, which required licensees to develop and submit an ERDS implementation plan to the NRC by October 28, 1991. There is no longer

a need for the date requirement of this provision because the date has expired. The NRC is proposing to delete “by October 28, 1991” from this provision.

(15) Appendix E to 10 CFR part 50, paragraph VI.4.d, which required licensees to complete the implementation of the ERDS by February 13, 1993, or before escalation to full power, whichever comes later. There is no longer a need for the date requirement of this provision because the date has expired. The NRC is proposing to delete “by February 13, 1993, or” and “whichever comes later” from this provision and to continue to require licensees to submit an ERDS implementation plan to NRC before escalation to full power.

The NRC is proposing to eliminate these completed one-time requirements in the interest of regulatory clarity. Eliminating these requirements would not relax any currently effective regulatory requirement or cause any regulatory burden for current or future licensees or applicants.

12. Revisions to § 72.32

The NRC proposes to amend § 72.32(a) to address the applicability of that provision’s requirement that an application for a specific license ISFSI must include an emergency plan that includes the information in § 72.32(a)(1) through (16). The proposed amendment would clarify that the requirement applies when the proposed ISFSI would not be located on the site or within the exclusion area of a nuclear power reactor licensed under 10 CFR parts 50 or 52. A nuclear power reactor licensed under 10 CFR parts 50 or 52 could be under construction, operating, or in decommissioning. The proposed revisions would consolidate the current language and remove redundancies by using standardized language consistent with other amendments in this proposed rule.

The NRC proposes to amend § 72.32(c) to clarify that the nuclear power reactor referenced in that provision need not be authorized to operate for the ISFSI licensee to use the emergency plan requirements in § 50.47 to meet the requirements of § 72.32. Currently, § 72.32(c) applies to ISFSI licensees located on the site or within the exclusion area of a nuclear power reactor that is licensed to operate. Because a nuclear power reactor licensee is not authorized to operate once the NRC docket the certifications required under § 50.82(a)(1) or § 52.110(a), § 72.32(c) could be read not to apply to an ISFSI licensee at a decommissioning reactor site. However, the current language of § 72.32 allows

an ISFSI licensee with a reactor emergency plan to use that emergency plan to meet the applicable requirements for an ISFSI emergency plan. Therefore, the proposed rule would clarify that, when the nuclear power reactor is under construction, operating, or in decommissioning, the ISFSI licensee could rely on the emergency plan requirements in appendix E to part 50 of this chapter and 10 CFR 50.47(b), or the requirements of 10 CFR 50.200(a) or 10 CFR 50.200(b), to meet the requirements of § 72.32.

B. Physical Security

The NRC’s regulations governing physical security at a nuclear power reactor typically do not distinguish between an operating nuclear power reactor and a nuclear power reactor that is in a decommissioning status. However, the security risk profile presented by a decommissioning reactor decreases significantly from that of an operating nuclear power reactor due to the reduction in the number of target sets⁵ and the reduced consequences of radiological sabotage. The radiological consequences of a security event decrease as reactors transition through each of the following four levels of decommissioning: (1) Permanent cessation of operations and permanent removal of all fuel from the reactor vessel, (2) sufficient decay of fuel in the SFP such that it would not reach the zirconium fuel cladding ignition temperature within 10 hours under adiabatic heatup conditions, (3) transfer of all fuel to dry storage, and (4) removal of all fuel from the site. Decommissioning nuclear power reactor licensees have sought NRC approval of exemptions from, license amendments for, and alternative measures to, certain physical security regulatory requirements because of the reduction in the number of target sets and the reduced consequences of radiological sabotage as the nuclear power reactor site transitions through these levels. The NRC is proposing options to allow nuclear power reactor licensees to make certain commonly-requested changes to their physical security plans based on these decommissioning levels without requesting exemptions, alternative measures, or license amendments.

1. Security Plans

Upon the cessation of operations and removal of all fuel from the reactor

⁵ A target set is the minimum combination of equipment or operator actions which, if all are prevented from performing their intended safety function or prevented from being accomplished, would likely result in radiological sabotage.

vessel, licensees typically seek to modify their security plans to reflect changes in site conditions. The NRC’s regulations in § 50.54(p) establish processes that allow licensees to make changes to their security plans. Section 50.54(p)(1) requires licensees to seek NRC review and approval of any changes that result in a decrease in safeguards effectiveness of their security plans. Section 50.54(p)(2) allows licensees to make changes to their security plans without prior NRC approval provided that the changes do not decrease the safeguards effectiveness of the plan.

The current regulations do not define the term “decrease in safeguards effectiveness” nor do they include examples of the types of changes that would constitute a decrease in safeguards effectiveness. Additionally, there is no definition of the term “change.” This lack of clear definitions has resulted in difficulties for licensees implementing security plan changes. For example, some licensees have implemented changes under § 50.54(p)(2) that the NRC later determined decreased the safeguards effectiveness of their security plan. Similarly, some licensees have unnecessarily requested NRC review and approval of changes that did not decrease the safeguards effectiveness of their security plan.

The NRC is proposing to revise § 50.54(p) to include definitions of the terms “change” and “decrease in safeguards effectiveness.” The application of these definitions would be limited to the revised § 50.54(p) and would apply to all 10 CFR part 50 and 10 CFR part 52 licensees with operating, decommissioning, and/or decommissioned reactor units. The term “change” would be defined in a new § 50.54(p)(1)(i) to mean an action that results in a modification of, addition to, or removal from, the licensee’s security plans. The term “decrease in safeguards effectiveness” would be defined in a new § 50.54(p)(1)(ii) to mean a change or series of changes to an element or component of the security plans referenced in § 50.54(p)(2) that reduces or eliminates the licensee’s ability to perform or maintain the capabilities established in § 73.55(b)(3)(i) without compensating changes to other security plan elements or components.

Currently, decommissioning (and operating) reactor licensees use the § 50.54(p)(2) process to implement changes that they have determined do not decrease the safeguards effectiveness of their security plans. The § 50.54(p)(2) process requires that licensees submit a report of these

changes to the NRC. In addition to a description of these changes, reactor licensees have typically included in their report supplemental information demonstrating that such changes do not constitute a decrease in safeguards effectiveness. The submittal of this supplemental information in the reports has been voluntary. The NRC's practice is to review these reports to confirm that the licensee properly concluded that the changes would not decrease the safeguards effectiveness of their Commission-approved security plan. The submittal of supplemental information in the reports allows the NRC to verify in a timely manner that the change does not result in a decrease in the safeguards effectiveness of the plan. Without this supplemental information, the NRC could only make this determination through the inspection process. The NRC is proposing to require that reactor licensees include with the required § 50.54(p)(2) report a summary of the analysis performed to determine that the change does not decrease safeguards effectiveness of the security plan. The summary must be sufficient to demonstrate that the change does not decrease the safeguards effectiveness of the plan.

2. Dry Cask Storage

An ISFSI located at a nuclear power reactor site is typically licensed under a general license issued pursuant to subpart K of 10 CFR part 72. Under a general license, licensees are required to protect the SNF in the ISFSI in accordance with the physical security requirements in § 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," with the additional conditions and exceptions noted in § 72.212, "Conditions of general license issued under § 72.210." The NRC also licenses certain ISFSIs under a 10 CFR part 72 specific license. Consistent with § 72.180, "Physical protection plan," licensees holding a specific license are required to protect the SNF in the ISFSI in accordance with the physical security requirements in § 73.51, "Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste." Although the physical security requirements that apply to general license ISFSIs and specific license ISFSIs provide equivalent levels of protection, there are differences. For instance, § 73.55 requires licensees to ensure they maintain the capability to detect, assess, interdict, and neutralize threats. Section 73.51 requires licensees to detect and assess threats and

communicate with an appropriate response organization. The additional requirements in § 73.55 that support interdiction and neutralization of threats is only one example of differences that lead to licensee requests for exemptions once all fuel has been placed in dry cask storage.

As stated at the beginning of this section, decommissioning reactors typically transition through four distinct levels during decommissioning. Many decommissioning licensees have submitted license amendment requests, requests for exemptions, and requests for approval of alternative measures to remove § 73.55 physical security requirements that are no longer applicable once the licensee enters the third decommissioning level when all SNF has been moved to a dry cask storage system.

The need for license amendments, exemptions, and approvals of alternative measures imposes a regulatory burden upon both licensees and the NRC. Accordingly, the NRC is proposing that once all SNF has been placed in dry cask storage, licensees may elect to follow the proposed § 72.212(b)(9)(vii) and protect a general license ISFSI in accordance with the physical security requirements in § 73.51. The applicability section of § 73.51 would also be amended to reflect this change. A licensee would be able to use the process established in the revised and renumbered § 50.54(p)(3) to make this change and submit its revised physical security plan to the NRC. These security plans would have to continue to address the applicable security-related orders associated with an ISFSI that are conditions of the license. The NRC is also proposing conforming changes to § 72.13, "Applicability," to reflect the requirements that would apply to a licensee that elects to follow the proposed § 72.212(b)(9)(vii).

3. Significant Core Damage

The prevention of significant core damage and spent fuel sabotage is a general performance objective of the reactor licensee physical protection program required by § 73.55. During the first level of decommissioning, when the NRC has docketed a licensee's certifications that the reactor has permanently ceased operating and all fuel has been removed from the reactor vessel and placed in the SFP, there is no longer fuel in the core and therefore the risk to public health and safety from significant core damage has been removed. This reduced risk allows licensees to eliminate requirements to protect against significant core damage

or train security and operational personnel to protect and respond to core damage events.

The NRC is proposing that a licensee of a decommissioning nuclear power reactor no longer be required to meet the requirement in § 73.55(b)(3) to protect against significant core damage once the NRC has docketed a licensee's certifications that the reactor has permanently ceased operating and all fuel has been removed from the reactor vessel. The requirement in § 73.55(b)(3) to protect against spent fuel sabotage remains in effect as long as spent fuel remains in the spent fuel pool.

4. Vital Areas

A vital area (VA) is defined in § 73.2, "Definitions," as any area that contains vital equipment. Under § 73.2, vital equipment means any equipment, system, device, or material, the failure, destruction, or release of which could directly or indirectly endanger public health and safety by exposure to radiation. The NRC also considers the equipment or systems that would be required to function to protect public health and safety following such a failure, destruction, or release to be vital. There are specific physical security requirements for the protection of VAs and vital equipment. The current regulation in § 73.55(e)(9)(v) specifies that the reactor control room shall be considered a VA.

The role of the reactor control room at an operating plant, as described in Criterion 19, "Control room," of appendix A, "General Design Criteria for Nuclear Power Plants," to 10 CFR part 50, is to provide a protected space from which actions can be taken to operate the nuclear power plant safely without interruption under normal or accident conditions. For a permanently shutdown and defueled nuclear power reactor, the vital equipment associated with operating the reactor vessel is no longer needed. The remaining vital equipment (*e.g.*, associated with SFP cooling) may no longer be needed or may be relocated to a VA separate from the reactor control room. Once a reactor has permanently ceased operations, the need for a reactor control room is eliminated if all of the vital equipment is removed and if the area does not serve as the VA boundary for other VAs. The proposed rule would revise § 73.55(e)(9)(v) to provide that a licensee of a decommissioning nuclear power reactor would no longer need to designate the reactor control room as a VA if it does not otherwise meet the definition of a VA in § 73.2.

5. Communications

Currently § 73.55(j)(4)(ii) requires continuous and redundant communications between the reactor control room and the central alarm station (CAS). Once a nuclear power reactor has permanently ceased operations, a licensee may no longer have a reactor control room or a licensed senior operator present in a reactor control room. Therefore, it would not be feasible for a licensee of a decommissioning nuclear power reactor to comply with the current regulatory requirement. Licensees typically request an exemption from this requirement and request that the CAS be allowed to establish continuous and redundant communications with the senior on-site licensee representative.

The NRC is proposing to amend § 73.55(j) to require continuous and redundant communications be maintained between the CAS and the CFH or senior on-shift licensee representative once the reactor has ceased operations and the licensee no longer has licensed senior operators in the control room. The intention of this change is to allow licensees flexibility in maintaining communications with one or both of these individuals.

Communication requirements will continue to include all the conditions currently required: Continuous communication capability with onsite and offsite resources; radio or microwave transmitted two-way voice communication, in addition to conventional telephone service, between the alarm stations and local law enforcement authorities; and alternative communication measures in place in areas where communication could be interrupted or cannot be maintained.

6. Suspension of Security Measures

Current regulations in § 73.55(p) allow for the suspension of security measures in an emergency or during severe weather. A senior licensed operator must approve the suspension of security measures. Once a nuclear power reactor has entered decommissioning status and all fuel has been removed from the reactor, there may no longer be a licensed senior operator on site. Therefore, it may not be feasible for a licensee of a decommissioning nuclear power reactor to implement this requirement in the event of an emergency or severe weather.

The NRC is proposing to amend the requirements in § 73.55(p) to allow a CFH to suspend security measures in the event of an emergency or severe

weather once the reactor has shutdown and all fuel has been removed from the reactor core.

These proposed changes to § 73.55(p) would be consistent with the existing regulations in § 50.54(x) and (y) that govern approvals for reasonable actions that a licensee may take to depart from a license condition or a technical specification in an emergency. In accordance with the provisions of § 50.54(y), licensee actions permitted by § 50.54(x) must be approved (at a minimum) by a licensed senior operator or, at a decommissioning nuclear power reactor after submittal of the certifications required under § 50.82(a)(1) or § 52.110(a), by either a licensed senior operator or a CFH, before taking the action.

C. Cyber Security

The NRC is proposing to update cyber security requirements in § 73.54, “Protection of digital computer and communication systems and networks” for nuclear power reactor licensees. This update would clarify the cyber security requirements applicable to a nuclear power reactor during each stage of the decommissioning process.

As stated in § 73.54, applicants and licensees must provide high assurance that their digital computer and communication systems and networks associated with safety and important-to-safety, security, and emergency preparedness (SSEP) functions are adequately protected against cyber attacks, up to and including the design basis threat described in § 73.1, “Purpose and scope.” To accomplish this, each holder of a nuclear power reactor operating license under 10 CFR part 50 has submitted a cyber security plan (CSP) to the NRC that has been approved by the NRC. Further, each combined license (COL) applicant is required to submit its CSP as part of its COL application for review and approval. Each approved CSP is referenced in a license condition in each 10 CFR part 50 license, and this license condition requires a licensee to maintain its CSP until the license is terminated or the license condition is removed by license amendment. A COL holder does not have an equivalent cyber security license condition.

The cyber security requirements in § 73.54 apply to licensees currently licensed to operate a nuclear power plant. Once the NRC has docketed a licensee’s § 50.82(a)(1) or § 52.110(a) certifications, that licensee is no longer authorized to operate a nuclear power plant. Therefore, the requirements in § 73.54 would no longer apply to such a licensee. However, each 10 CFR part

50 licensee has a license condition requiring the licensee to maintain its CSP, and this license condition remains in effect during decommissioning. A COL holder, without the license condition, is not required to maintain its CSP when it begins decommissioning.

Although a licensee that has submitted its § 50.82(a)(1) or § 52.110(a) certifications is no longer operating, such a licensee may still have fuel recently removed from the reactor vessel in its SFP. As discussed in the “*Technical Basis for Graded Approach*” section of this document, if the spent fuel in the SFP has not sufficiently decayed, there is a risk that the spent fuel could heat up to clad ignition temperature and lead to a zirconium fire for postulated draindown scenarios in a timeframe that is too short to reliably implement mitigation measures or to take other appropriate response actions.

As discussed in the “*Technical Basis for Graded Approach*” section of this document, in Level 2 there is little chance that the spent fuel in the SFP could heat up to clad ignition temperature within 10 hours. Accordingly, the NRC is proposing that the cyber security requirements in § 73.54 continue to apply to licensees through Level 1. This continuation of the cyber security requirements would ensure that a compromise of digital systems cannot adversely impact the effective operation of the licensees’ physical security programs and emergency preparedness functions prior to the time at which the spent fuel cannot reasonably heat up to clad ignition temperature within 10 hours after a draindown event. Although the cyber security requirements would continue to apply through Level 1, the number of critical digital assets would decrease as systems are removed from service, which in turn reduces the number of critical digital assets that must be protected by the CSP.

To clarify the applicability of the cyber security rule to decommissioning nuclear power reactor licensees, the NRC is proposing to add two paragraphs to § 73.54. A new § 73.54(i) would state that the requirements of § 73.54 will remain in effect until: (1) The NRC has docketed the licensee’s § 50.82(a)(1) or § 52.110(a) certifications, and (2) at least 10 months for a BWR or 16 months for a PWR have elapsed since the date of permanent cessation of operations or an NRC-approved alternative to the 10 or 16 month spent fuel decay period, submitted under proposed § 50.54(q)(7)(ii)(A) or (B), has elapsed. A new § 73.54(j) would state that, after both requirements of § 73.54(i) have been met, the licensee’s license

condition that requires implementation and maintenance of a cyber security plan would be removed from the license. The NRC is also proposing the removal of the introductory paragraph of § 73.54 in its entirety and revising the language of § 73.54(a), (b), and (c). These are conforming changes to clarify that the applicability of § 73.54 is not limited to “operating” reactors (*i.e.*, that § 73.54 would still be applicable after the NRC has docketed a licensee’s § 50.82(a)(1) or § 52.110(a) certifications), to remove language that is no longer needed concerning the initial submission of cyber security plans by existing licensees, and to add clarifying language to § 73.54(b) and (c). Further, the NRC is proposing a change to § 73.55(c)(6), which requires the licensee to establish, maintain, and implement a cyber security plan. This is a conforming change to reflect the scenario in which a decommissioning nuclear power reactor licensee is no longer required to maintain a cyber security plan (*i.e.*, the NRC has docketed the certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel, and the fuel in the SFP has sufficiently decayed), but is still required to comply with § 73.55(c).

The proposed revision to § 73.54(a) would not constitute backfitting for 10 CFR part 50 licensees. The proposed revision would constitute a change affecting the issue finality of COL holders; extending the requirement to maintain a CSP during decommissioning would be a new requirement imposed on COL holders. The NRC’s proposed backfit analysis is located in the “*Backfitting and Issue Finality*” section of this document.

D. Drug and Alcohol Testing

1. Scope of 10 CFR Part 26

The NRC is proposing to amend § 26.3, “Scope,” to correct an inconsistency within § 26.3(a) where the FFD requirements in 10 CFR part 26 apply differently to 10 CFR part 50 and 10 CFR part 52 licensees with decommissioning nuclear power reactors. The § 26.3(a) provision lists those licensees that are required to comply with designated subparts of 10 CFR part 26, including licensees who are authorized to operate a nuclear power reactor under § 50.57 and holders of a combined license under 10 CFR part 52 after the Commission has made the finding under § 52.103(g). In accordance with this requirement, 10 CFR part 26 does not apply to a holder of a nuclear power reactor license issued under 10 CFR part 50 that is no longer authorized to operate a nuclear

power reactor because the NRC has docketed the certifications required under § 50.82(a)(1) (*i.e.*, a decommissioning 10 CFR part 50 nuclear power reactor licensee). However, 10 CFR part 26 continues to apply to holders of combined licenses issued under 10 CFR part 52 throughout decommissioning. Therefore, there is an inconsistency in the application of FFD requirements to nuclear power reactor licensees during decommissioning.

The NRC has determined that there is no technical basis for this inconsistency. In the 1989 10 CFR part 26 final rule (54 FR 24468; June 7, 1989) (1989 FFD Final Rule), the Commission explained that the intent of that rule was to address the potential for worker impairment of any kind, including substance abuse that could affect the safe operation of nuclear power plants. The emphasis throughout the 1989 FFD Final Rule is that the rule is necessary to promote public health and safety when the plant is operational. The wording for 10 CFR part 52 licensees described in the scope of the 2008 10 CFR part 26 final rule (73 FR 16966; March 31, 2008) (2008 FFD Final Rule), specifically § 26.3(a), was an oversight. The emphasis of the 1989 FFD final rule that FFD need only apply to operating 10 CFR part 50 sites should be the same for 10 CFR part 52 licensees. Due to the decreased risk to public health and safety during decommissioning, 10 CFR part 26 should not apply to these licensees during decommissioning.

Therefore, the NRC proposes to clarify that 10 CFR part 26 does not apply to 10 CFR part 52 licensees once the NRC has docketed their § 52.110(a) certifications. Section 26.3(a) of the proposed rule would specify that each holder of an operating license for a nuclear power reactor under 10 CFR part 50 and each holder of a COL under 10 CFR part 52 for which the Commission has made the finding under § 52.103(g) must comply with the requirements of 10 CFR part 26, except for subpart K of 10 CFR part 26, until the NRC’s docketing of the license holder’s certifications described in §§ 50.82(a)(1) or 52.110(a).

For clarity, the NRC proposes to divide the current paragraph of § 26.3(a) into two paragraphs. Paragraph (a)(1) would retain the requirement in the second sentence of current § 26.3(a) to state the deadline by which licensees must implement their FFD program. Paragraph (a)(2) would retain the requirement in the first sentence of current § 26.3(a) that these licensees must comply with the requirements of 10 CFR part 26, except subpart K, but clarify that this requirement ends when

the NRC docketed the licensee’s §§ 50.82(a)(1) or 52.110(a) certifications.

2. Fitness-for-Duty Elements for Insider Mitigation Program

Under § 73.55(b)(9), a licensee is required to establish, maintain, and implement an IMP to monitor the initial and continuing trustworthiness and reliability of individuals granted unescorted access authorization (UAA) or unescorted access (UA) to a protected area (PA) or vital area (VA).

Section 73.55(b)(9)(ii)(B) requires that an IMP must contain elements of an FFD program described in 10 CFR part 26. However, the regulations do not identify which FFD program elements must be included in the IMP. Section 73.55(b)(9)(ii)(B)(1) and (2) of this proposed rule would amend § 73.55(b)(9)(ii)(B) to establish an appropriate set of FFD provisions to be incorporated into the IMP of operating and decommissioning 10 CFR part 50 and 10 CFR part 52 licensees to provide reasonable assurance that individuals granted UAA or UA to the PA or VA are trustworthy and reliable.

Section 73.55(b)(9)(ii)(B)(1) of this proposed rule would clarify § 73.55(b)(9)(ii)(B) that licensees implementing 10 CFR part 26, regardless of whether they are required to do so, are in compliance with § 73.55(b)(9)(ii)(B). A licensee’s full 10 CFR part 26 FFD program (*i.e.*, an FFD program that complies with all applicable 10 CFR part 26 requirements) would contain FFD elements appropriate for inclusion in the licensee’s IMP. This would apply to both operating and decommissioning licensees.

Section 73.55(b)(9)(ii)(B)(2)(i) and (j) of this proposed rule describes the minimum 10 CFR part 26 elements necessary for a 10 CFR part 50 and 10 CFR part 52 decommissioning licensee’s IMP. Section 73.55(b)(9)(ii)(B)(2)(i) of the proposed rule states that individuals who have unescorted access to the VAs at a decommissioning site, perform certified fuel handler functions (*i.e.*, individuals covered by § 50.2) prior to all spent nuclear fuel at a site being placed in dry cask storage, perform security-related functions (*i.e.*, individuals covered by § 26.4(a)(5)), or administer the drug testing program (*i.e.*, individuals covered by § 26.4(g)) are subject to the requirements in 10 CFR part 26 except for subparts I and K. Individuals who have fuel handler certifications are essential to the safe movement of spent nuclear fuel. Individuals who have security-related responsibilities or perform work around the spent fuel pool may have knowledge

of value to an adversary. In addition, security personnel generally carry weapons on site and would pose a significant challenge to site security if they were to perform as an active insider during an attack. Testing of individuals who administer a drug testing program is viewed as essential to the integrity of the program.

Proposed § 73.55(b)(9)(ii)(B)(2)(ii) states that individuals who have UA to the protected area, but do not perform certified fuel handling or security-related functions or administer the drug testing program would still be subject to pre-access and for-cause testing (§ 26.31(c)(1) and (2)) and behavior observation (§ 26.33), but would not be subject to random testing (§ 26.31(c)(5)). The NRC proposes to relax these requirements because while the reactor is in decommissioning the potential contribution of certain personnel to support an adversary as an insider is greatly reduced. Individuals who do not have any security-related responsibilities or regular SFP area UA will have less potential contribution as an insider threat.

The NRC has determined that the FFD elements necessary for an IMP under this proposed rule are commensurate with the hazard and potential event consequences associated with a facility's operational status. Section 73.55(b)(3) states that the physical protection program must be designed to prevent significant core damage and spent fuel sabotage. Operating nuclear power reactor facilities contain many target sets located throughout the PA of potential interest to an adversary seeking to affect core damage or spent fuel sabotage, thus anyone who has UAA or UA to the PA could contribute significantly to an adversary.

The hazard and potential event consequences associated with decommissioning facilities significantly decrease in comparison to those associated with the operating facilities. During decommissioning, the SFP becomes the primary focus of the licensee's obligation to protect against the radiological sabotage design basis threat, as it becomes the location where all spent fuel is located when a nuclear power reactor is no longer operating and prior to transitioning to an ISFSI. With this perspective, this proposed rule tailors applicability of the FFD elements commensurate with the duties and access of personnel who have been granted UAA and maintain UA to the PA or VA.

3. Criminal Penalties

The NRC proposes to amend the criminal penalties section of 10 CFR

part 26 by including § 26.3 within § 26.825(a). Existing § 26.825(a) applies the NRC's authority under the AEA to impose criminal penalties for willful violations of, attempts to violate, or conspiracies to violate NRC regulations. Section 26.825(b) lists § 26.3 as one of the 10 CFR part 26 provisions that is excluded from § 26.825(a). In general, the criminal penalties sections of NRC regulations apply to substantive requirements, and administrative or procedural regulatory provisions are excluded from criminal penalties sections. The current § 26.3 is entitled "Scope" and identifies which entities are within the scope of 10 CFR part 26. Scoping provisions typically do not contain substantive requirements, which may explain why § 26.825(b) includes § 26.3. However, the current § 26.3(a) not only describes the entities that are subject to the requirements of 10 CFR part 26 but also includes a substantive requirement for certain entities to comply with requirements in 10 CFR part 26 by a specific deadline. This requirement was added to § 26.3(a) in the 2008 FFD Final Rule, but § 26.825(b) was not updated to reflect this change, which was an oversight. This proposed rule would not change the substantive requirement in § 26.3(a). Because proposed § 26.3(a) would continue to impose a substantive requirement, the NRC proposes to remove § 26.3 from § 26.825(b), thereby including § 26.3 in § 26.825(a).

E. Certified Fuel Handler Definition and Elimination of the Shift Technical Advisor

The NRC is proposing two revisions to its regulations. The first change would be to amend the definition of a CFH in § 50.2 to provide an alternative that would eliminate the need for licensees to seek NRC approval for fuel handler training programs by adding a provision that requires the training program to address the safe conduct of decommissioning activities, safe handling and storage of spent fuel, and appropriate response to plant emergencies, and specifies that a CFH must be qualified in accordance with a fuel handler training program that meets the same requirements as training programs for non-licensed operators required by § 50.120. This proposal would provide consistency in the regulatory treatment of the training programs for non-licensed operators (which do not require NRC approval) and fuel handler training programs to qualify a non-licensed operator as a CFH (which do require NRC approval). The second change would clarify that an STA is not required for

decommissioning reactors. These changes would provide clarity to the CFH's responsibilities and functions and the role of an STA by codifying current licensing practices. This proposed rule would also clarify the management role of the CFH in a manner that is consistent with § 50.54(y) as discussed in section "B. Physical Security" in this document.

1. Alternative Definition for Certified Fuel Handler

The current definition of a CFH in § 50.2 does not specify what is in an NRC-approved fuel training program. Licensees have submitted requests for the approval of CFH training and retraining programs in connection with their decommissioning. After receiving NRC approval of a CFH training program, the licensee typically submits a license amendment request to propose changes to the Administrative Controls section of its Technical Specifications (TS) to include a CFH, among other applicable changes based on the approval of the CFH training program.

For example, on May 12, 2014, the NRC approved the Shift Manager/ Certified Fuel Handler training program for Kewaunee Power Station (ADAMS Accessions No. ML14104A046). The NRC's safety evaluation supporting approval of the CFH training program used criteria that focused on whether the licensee trained CFHs on the following three objectives: (1) Safe conduct of decommissioning activities; (2) safe handling and storage of spent fuel; and (3) appropriate response to plant emergencies. These three objectives have subsequently been the basis for other NRC approvals of CFH training programs for licensees entering or planning to enter the decommissioning process: Entergy for VY (ADAMS Accession No. ML14162A209); Exelon for Oyster Creek Nuclear Generation Station, Clinton Power Station, and Quad Cities Nuclear Power Station (ADAMS Accession No. ML16222A787); and Entergy for FitzPatrick Nuclear Power Plant (ADAMS Accession No. ML16259A347).

In the safety evaluations for those approved CFH training programs, the NRC discusses the 1996 Final Rule and its role in the development of the objectives for an acceptable CFH training program. The NRC recognized that the risks posed at decommissioning reactors are significantly less than those posed by operating reactors. The NRC noted specifically that:

- While the spent fuel is still highly radioactive and generates heat caused by radioactive decay, no neutron flux is

generated and the fuel slowly cools as its energetic decay products diminish.

- The systems required for maintaining the spent fuel in the spent fuel pool as well as the operations required to contain the remaining residual contamination in the facility and spent fuel pool are relatively simple.

- Because the spent fuel is stored in a configuration that precludes a nuclear fission reaction, no generation of new radioactivity can occur and the potential for consequences that could result from an inadvertent nuclear reaction are highly unlikely.

Because of the reduced risks and relative simplicity of the systems needed for safe storage of the spent fuel, the NRC explained in the 1996 Final Rule that the degree of regulatory oversight required for a nuclear power reactor during its decommissioning stage is considerably less than that required for the facility during its operating stage. In the 1995 decommissioning proposed rule (60 FR 37374; July 20, 1995), the NRC provided insights as to the responsibilities of the proposed new position of the CFH. Specifically, the NRC stated that a CFH is an individual who has the requisite knowledge and experience to evaluate plant conditions and make judgments about emergency action decisions necessary to protect the public health and safety.

In addition to using the three objectives to evaluate the fuel handler training programs for licensees entering or planning to enter decommissioning, the NRC applied the criteria in § 50.120, “Training and qualification of nuclear power plant personnel,” and assessed the proposed fuel handler training programs against the elements of a systems approach to training (SAT) as defined in § 55.4, “Definitions.” Section 50.120 identifies individuals required to be subject to an SAT, including non-licensed operators such as CFHs, and necessary elements for training programs. These elements include the requirement to periodically evaluate and revise the training program, as appropriate, to reflect changes to the facility (e.g., decommissioning), procedures, regulations, and quality assurance requirements.

Because it has developed succinct criteria to approve fuel handler training programs, the NRC proposes to include this criterion in its regulations as an alternative definition of a CFH to eliminate the need for licensees to submit requests for NRC approval of CFH training programs. Specifically, the NRC would codify current approval practices by amending § 50.2 to add the

three broad-scope objectives as responsibilities for which a CFH must be trained: (1) Safe conduct of decommissioning activities; (2) safe handling and storage of spent fuel; and (3) appropriate response to plant emergencies. In addition, the CFH would have to qualify in accordance with a fuel handler training program that meets the same requirements as training programs for non-licensed operators required by § 50.120. Should a licensee not exercise the alternative definition, it would need to submit a request for approval of a fuel handler training program.

2. Elimination of the Shift Technical Advisor

The STA is a position identified in licensees’ TSs. The STA provides engineering expertise in the diagnosis of complex problems with SSCs during reactor operation. Once a licensee enters the decommissioning process, the STA function is no longer needed. The current regulations do not address the acceptability of discontinuing the STA position for a decommissioning reactor. Licensees have been removing the STA position and replacing that position with a CFH in their TSs through license amendments (see Duke Energy Florida for Crystal River Unit 3 Nuclear Generating Plant (ADAMS Accession No. ML14097A145); Exelon for Oyster Creek Nuclear Generating Station (ADAMS Accession No. ML16235A413); and Entergy for VY (ADAMS Accession No. ML14217A072)). The NRC proposes to revise a footnote to the table titled “Minimum Requirements Per Shift for On-Site Staffing of Nuclear Power Units by Operators and Senior Operators Licensed Under 10 CFR part 55” in § 50.54(m)(2)(i) to state that an STA is not required upon the NRC’s docketing of the license holder’s certifications required under §§ 50.82(a)(1) or 52.110(a).

F. Decommissioning Funding Assurance

The NRC proposes to amend its regulations to modify decommissioning funding reporting requirements, clarify decommissioning funding assurance requirements, and eliminate duplicative regulations.

1. Clarification of § 50.82(a) and § 52.110(h)

The NRC is proposing to amend the regulations in § 50.82(a)(8)(i)(A) and § 52.110(h)(1)(i) to remove the term “legitimate.” This term does not add any substance to the regulations and is potentially confusing. The intent of the regulation is to ensure that expenses fall within the NRC definition of

decommission. Whether an expense falls within the definition of decommission would continue to be determined on a case-by-case basis by the licensee when considering whether to make a withdrawal from the decommissioning trust fund. Since this term is non-substantive, its removal would not change any of the existing requirements regarding the use of decommissioning funds.

2. Changes to Reporting Requirements

In the “Financial Assurance Requirements for Decommissioning Nuclear Power Reactors” final rule (63 FR 50465; September 22, 1998), the NRC added the provisions currently in § 50.75(f)(1) and (2) that require each nuclear power reactor licensee to file a report with the NRC on the status of its decommissioning funding for each reactor that it owns, by March 31st of every odd-numbered year or annually for plants that are within five years of their projected end of operation. This report must specify: (1) The amount of decommissioning funds estimated to be required pursuant to § 50.75(b) and (c); (2) the amount of decommissioning funds accumulated to the end of the calendar year preceding the date of the report; (3) a schedule of the annual amounts remaining to be collected; (4) the assumptions used regarding rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections; (5) any contracts upon which the licensee is relying; (6) any modifications occurring to a licensee’s current method of providing financial assurance since the last submitted report; and (7) any material changes to trust agreements.

The NRC is proposing to change the reporting frequency in § 50.75(f)(1) to coordinate the reporting frequency with the ISFSI decommissioning reporting frequency in § 72.30. This change would convert the biennial decommissioning funding status report required for 10 CFR part 50 and 10 CFR part 52 nuclear power reactor licensees to a triennial decommissioning funding status report as currently is required for 10 CFR part 72 ISFSI licensees. This revision would not change the annual reporting frequency for a reactor licensee that is within 5 years of its projected end of operations, whether that projection is based on the license’s expiration date or on a premature shutdown, and would not change the annual reporting frequency for a reactor that has permanently ceased operations. Also, the change in reporting frequency would not relieve the licensee from calculating annual adjustments as

required under § 50.75(a)(2) and would not affect the Table of Minimum Amounts in § 50.75(c) or its escalation factors. Therefore, a licensee would be required to continue to monitor its decommissioning funding on an annual basis but instead of reporting at least once every 2 years to the NRC, it would report at least once every 3 years.

Since 1999, the NRC's regulations have mandated that licensees report to the NRC the status of their decommissioning funding. Under § 50.75(f)(1), the biennial decommissioning funding status report requires the disclosure of seven items, including the balance of the decommissioning trust fund as of December 31st of the prior year. The NRC conducted spot checks of licensee records related to this information. The NRC did not identify any major discrepancies related to this information, as explained in SECY-15-0005 (ADAMS Accession No. ML14210A554), dated January 15, 2015. Therefore, the NRC has confidence that changing from a biennial to a triennial reporting frequency will not subject the public to any additional risks associated with decommissioning funding assurance. In addition, even with a triennial reporting frequency, there would be ample time to resolve any decommissioning funding issue. Furthermore, the proposed revision does not change the requirement for more frequent reporting as a licensee approaches the permanent cessation of operations and while the licensee is in decommissioning or the requirement for a site-specific decommissioning cost estimate during this period.

The NRC proposes a rule change in § 50.75(h) in order to be consistent with the requirements of § 50.4. Specifically, notifications would be sent directly to the Document Control Desk, and not to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable. This change would provide one consistent location for licensees to docket all notifications to the NRC.

The NRC proposes to delete § 50.75(f)(2). The language of existing § 50.75(f)(1) fully encompasses the language of paragraph (f)(2), and, therefore, paragraph (f)(2) is unnecessary and potentially confusing. By removing paragraph (f)(2) the NRC would not be removing the requirement on licensees to continue submitting decommissioning funding assurance status reports. Existing paragraphs (f)(3) through (5) would be redesignated as paragraphs (f)(2) through (4).

3. Shortfalls in Decommissioning Funding Assurance

The requirement in § 50.75 that the licensee provide reasonable assurance that sufficient funds will be available for radiological decommissioning is a continuing obligation. However, economic factors can cause the amount of a licensee's financial assurance to fall below the amount required (either by the NRC minimum formula in § 50.75(c), or by a licensee's site-specific decommissioning cost estimate), thereby creating a shortfall. The regulations do not explicitly discuss what to do when a licensee faces a funding shortfall, regardless of its cause. Instead, the NRC addressed the scenario in its guidance in RG 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors" (ADAMS Accession No. ML003740066). This guidance provides that non-rate-regulated licensees should make up shortfalls in decommissioning funding within 2 years and electric utility licensees within 5 years.

The NRC is proposing to amend its regulations in § 50.75(f)(1) to clarify that, although the regulations establish a continuing obligation to provide reasonable assurance of decommissioning funding, when a licensee identifies a shortfall in the report required by § 50.75(f)(1), the licensee must identify additional financial assurance to cover the shortfall in the next report. Specifically, the proposed rule would require licensees to remedy shortfalls before permanent cessation of operations consistent with the methods identified in § 50.75(e) in the next § 50.75(f) report. The proposed rule would clarify the expectations for how reasonable assurance of funds will be available for the decommissioning process. For electric utilities that currently submit biennial reports but correct their shortfalls within 5 years, the NRC proposes that they would submit their decommissioning funding status reports triennially and explain in their reports how they plan to correct any existing shortfall. Electric utilities should continue to correct shortfalls within 5 years as explained in RG 1.159. For non-rate-regulated licensees that currently submit biennial reports and should correct shortfalls within a 2 year period, the NRC proposes that they correct any shortfalls within the 3 year reporting period. The NRC proposes to clarify the last sentence of current § 50.75(f)(1) to reduce the number of clauses and enhance readability.

The NRC proposes to revise § 50.82(a)(9)(ii)(F) to require licensees to identify the specific sources of funds for "remaining decommissioning costs,"

including sources of funds for license termination, spent fuel management, and ISFSI decommissioning.

4. Conforming Changes to 10 CFR Part 52

The NRC proposes to revise § 52.110 to make the same changes proposed in § 50.82 for the reasons previously discussed and for consistency. In addition, the NRC proposes to add paragraphs (h)(5) through (h)(7) with site-specific decommissioning cost estimate reporting requirements that are identical to the requirements in § 50.82(a)(8)(v) through (vii). Consistent with proposed § 52.110(h)(7), a report on irradiated fuel should only be submitted if irradiated fuel is on site.

5. Change to 10 CFR Part 72

The NRC proposes to revise § 72.30 so that the submittals subsequent to the initial decommissioning funding plan would no longer require NRC approval. The NRC found little benefit in approving subsequent decommissioning funding plans for ISFSIs because the financial assurance mechanisms employed are very similar to those used for nuclear power reactors. The experience to date is that decommissioning funding plans have not changed substantively because of the passive nature of the ISFSI design, the static nature of ISFSI operations after loading, and the fact that there are no liquids or liquid effluents present in dry cask storage facilities. In addition, the NRC expects that the frequency of events that could potentially impact the decommissioning funding plan (*i.e.*, due to spills, facility modifications, or changes in possession limits that are cited in § 72.30(c)) would continue to be low. However, if they were to occur, it is important that these events be factored into the cost of decommissioning. This change would make the processes under § 72.30(c) more efficient and less burdensome to the licensee and the NRC, while still maintaining reasonable assurance of adequate funding for the decommissioning of ISFSIs.

G. Offsite and Onsite Financial Protection Requirements and Indemnity Agreements

The NRC proposes to amend its financial protection regulations under 10 CFR part 140, "Financial Protection Requirements and Indemnity Agreements," and § 50.54(w) to address instances where a decommissioning reactor licensee may not need to maintain its full amounts of offsite liability insurance and onsite property insurance. Reductions in insurance

amounts may be warranted commensurate with the reduction in probability of an incident at a reactor in decommissioning and also a reduction in the offsite and onsite consequences from this event. The proposed financial protection requirements would codify the approach currently used by the NRC to approve exemptions from the financial protection requirements for decommissioning 10 CFR part 50 and 10 CFR part 52 nuclear power reactor licensees. The proposed changes would also increase efficiency and transparency in this area by clarifying the requirements for financial protection of decommissioning plants, providing for regulatory certainty, and reducing

regulatory burden without affecting public health and safety. Specifically, these proposed requirements would represent a graded approach, including the criteria to be considered, where the financial protection requirements for decommissioning sites are adjusted commensurate with the level of risk posed at two stages of the decommissioning process.

Proposed revisions to 10 CFR part 140 and § 50.54(w) would also address other regulatory topics including, for example, the applicability of procedures regarding extraordinary nuclear occurrences and a proposed new notification requirement for licensees when they make changes to the amount of onsite insurance.

1. Proposed Revisions to Offsite Liability and Onsite Property Insurance Requirements

The NRC proposes to allow 10 CFR part 50 and 10 CFR part 52 nuclear power reactor licensees in decommissioning to reduce the offsite liability and onsite property insurance amounts that they are required to maintain under §§ 140.11 and 50.54(w), respectively, without obtaining exemptions from the NRC’s regulations. Instead, as proposed under §§ 140.11(a)(5) and 50.54(w)(5), once certain criteria are satisfied, licensees could reduce their financial protection to the amounts in Level 2 in Table 3:

TABLE 3—TWO-STEP GRADED APPROACH

Level	Reactor site description	Offsite requirement (§ 140.11)	Onsite requirement (§ 50.54(w))
1	Operating or Permanently Ceased Operations and Permanently Defueled.	\$450 million; participation in the industry retrospective rating plan.	\$1.06 billion.
2	Sufficiently Decayed Fuel; ≥1,000 gallons of radioactive waste.	\$100 million; withdrawal from the industry retrospective rating plan.	\$50 million.

Licensees in Level 1 of the graded approach would be required to maintain the full amounts of offsite liability and onsite property insurance currently required in §§ 140.11(a)(4) and 50.54(w), respectively, until the probability of a zirconium fuel cladding fire in the spent fuel pool is minimized. Maintaining the full level of insurance recognizes the potential for liability insurance claims following an accident of this type and the need for available resources to clean up the site.

The transition to Level 2 financial protection amounts for licensees would be optional and could occur after the passage of a specified amount of time (*i.e.*, 10 months for BWRs or 16 months for PWRs, beginning on the date of permanent cessation of operations, plus the NRC’s docketing of the certifications required by § 50.82(a)(1) or § 52.110(a) or after the lapse of an NRC-approved alternative time period to the 10 or 16 month spent fuel decay period that is submitted under § 50.54(q)(7)(ii)(A) or (B)). For the latter option, licensees would need to submit an analysis that demonstrates a reduced risk of a zirconium fuel cladding fire in the SFP. The reduction in the financial protection amounts as identified in Table 3 (*i.e.*, \$100 million in offsite liability insurance and withdrawal from the industry retrospective rating plan) was modeled on the offsite liability claims experience from the accident at Three Mile Island Unit 2 as documented

in SECY–93–127, “Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning” (ADAMS Accession No. ML12257A628). SECY–93–127 provides a reasonable basis for using the Three Mile Island Unit 2 experience as a model for determining the appropriate liability insurance coverage level for a permanently shutdown reactor that has completed its respective spent fuel cooling period. Additionally, as documented in SECY–93–127, the reduced onsite financial protection amount in Table 3 (*i.e.*, \$50 million in onsite property insurance coverage) was modeled on the potential onsite cleanup costs from a radiological incident involving the rupture of a large liquid radioactive waste storage tank (~450,000 gallons) containing slightly radioactive water. This event was selected as conceivable and a bounding scenario having negligible radiological consequences offsite.

The spent fuel heat-up analysis performed by the licensee for purposes of reducing its insurance amounts to those in Level 2 could be the same analysis that the licensee performs to relax the offsite emergency planning requirements under proposed § 50.54(q)(7)(ii)(A) or (B). The transition to Level 2 would prompt the licensee to notify the NRC under § 140.15(e) of a material change in financial protection—a reduction in offsite primary financial protection from \$450

million to \$100 million and withdrawal from the industry retrospective rating plan. The NRC proposes a conforming change to § 50.54(w) for a similar notification of a material change to onsite property insurance amounts.

The NRC is also proposing to periodically adjust the offsite and onsite financial protection amounts for decommissioned reactors to account for inflation. These adjustments would be in accordance with the aggregate percentage change in the Consumer Price Index and performed at intervals that coincide with the inflation adjustments for the retrospective premium under Section 170t of the AEA.

2. Proposed Revision to Extraordinary Nuclear Occurrences Requirements

The NRC proposes to amend its regulations in § 140.81, “Scope and purpose,” to clarify the applicability of the requirements for an Extraordinary Nuclear Occurrence (ENO) to reactors in decommissioning. Under Sections 11 and 170 of the AEA, and NRC regulations at subpart E, “Extraordinary Nuclear Occurrences,” to 10 CFR part 140, the NRC is authorized to make a determination as to whether an event at a production or utilization facility causing a discharge or dispersal of source, special nuclear, or byproduct material that has resulted or will result in substantial damages to offsite members of the public or property is an

ENO. An event will qualify as an ENO if the NRC determines that the criteria in § 140.84, “Criterion I—Substantial discharge of radioactive material or substantial radiation levels offsite,” and § 140.85, “Criterion II—Substantial damages to persons offsite or property offsite,” have been met.

The NRC recognizes that the radiological consequences resulting from an accident at a decommissioning reactor in Level 1 can be similar to those from an accident at an operating reactor. As presented in NUREG-1738, in the timeframe beginning immediately after the reactor is defueled and the fuel is placed in the SFP, the radiological consequences of a zirconium fire may be comparable to those from operating reactor postulated severe accidents. The existing potential consequences from a zirconium fire, until the fuel in the SFP has sufficiently decayed, provides the basis for the NRC’s proposal to amend its regulations to include plants in decommissioning within the scope of § 140.81.

3. Proposed New Rule Language in § 50.54(w)(6)

The NRC proposes to amend § 50.54(w) to require a prompt notification to the Commission of any material change in proof of onsite property insurance filed with the Commission under 10 CFR part 50. Specifically, the transition to Level 2 as proposed by the NRC would prompt the licensee to notify the NRC under § 50.54(w)(6) of a reduction in onsite property insurance from \$1.06 billion to \$50 million. This proposed amendment to § 50.54(w)(6) would be a conforming change, for consistency, with the existing offsite financial protection requirements under § 140.15(e).

H. Environmental Considerations

1. Clarifying Changes to 10 CFR Parts 50 and 52

A nuclear power reactor licensee’s transition from operating to decommissioning status does not involve an agency action that would trigger NRC responsibilities under environmental statutes, such as the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), or the National Historic Preservation Act (NHPA). However, § 50.82(a)(4)(i) (for nuclear power reactors licensed under 10 CFR part 50) and § 52.110(d)(1) (for nuclear power reactors licensed under 10 CFR part 52) require that PSDARs provide the reasons for concluding that appropriate previously issued environmental impact statements (EIS) will bound the

environmental impacts associated with site-specific decommissioning activities. After the PSDAR is submitted, the licensee must remain in compliance with § 50.82(a)(6)(ii) or § 52.110(f)(2), as applicable. These regulations state that licensees may not perform any decommissioning activities, as defined in § 50.2, that result in significant environmental impacts not previously reviewed. As explained in the 1996 Final Rule, the requirement in § 50.82(a)(6)(ii) functions as a prohibition against the licensee performing a decommissioning activity that would result in a significant impact “not previously reviewed” (61 FR 39283, 39286, and 39291; July 29, 1996). The NRC may develop updates to IMC 2561, “Decommissioning Power Reactor Inspection Program,” and the related Inspection Procedure (IP) 71801, “Decommissioning Performance and Status Review at Permanently Shutdown Reactors,” dated August 11, 1997, to provide guidance on inspections for compliance with § 50.82(a)(6)(ii) or § 52.110(f)(2) with respect to environmental reviews.

In certain circumstances, licensees may be unable to satisfy the requirement that licensees conclude in the PSDAR that all environmental impacts associated with site-specific decommissioning activities will be bounded by previous EISs. For example, NUREG-0586, Supplement 1, Volumes 1 and 2, “Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities: Regarding the Decommissioning of Nuclear Power Reactors” (Decommissioning GEIS) (ADAMS Accession No. ML023470327), identified several resource areas that were not generically resolved. If the EISs previously prepared for the construction and initial operation of the plant, for license renewal, or for another licensing action did not include site-specific analyses for those resource areas not generically resolved under the Decommissioning GEIS, then the licensee would be unable to make the determination in the PSDAR that all impacts will be bounded. Therefore, the licensee would have to either change its planned decommissioning activities so that the impacts would be bounded or submit and have approved a license amendment request or an exemption request to satisfy § 50.82(a)(4)(i) or § 52.110(d)(1) prior to conducting the subject decommissioning activity.

The NRC proposes to change the PSDAR requirements in § 50.82(a)(4)(i) and § 52.110(d)(1) to require that licensees provide the basis for determining whether the environmental impacts from site-specific

decommissioning activities are bounded by previous environmental reviews. This proposed rule change would clarify that licensees, at the PSDAR stage, are required to evaluate the environmental impacts and provide in the PSDAR the basis for whether the proposed decommissioning activities are bounded by previously issued, site-specific or generic environmental reviews. Given that some decommissioning activities will occur well in the future, licensees might not be able to make the definitive conclusion that impacts will be bounded at the PSDAR stage. Therefore, the proposed change would provide licensees flexibility to address any unbounded environmental impacts closer to, but still prior to, the decommissioning activity being undertaken that could cause the unbounded impact. In that case, the licensee should identify in the PSDAR the decommissioning activities that are not bounded by previous environmental reviews and will be addressed in the future. This proposed change would be consistent with the purpose of the PSDAR, as noted in RG 1.185, Revision 1, “Standard Format and Content for Post-Shutdown Decommissioning Activities Report” (ADAMS Accession No. ML13140A038), as a mechanism for NRC oversight because it would alert the NRC to any potentially unbounded environmental impacts associated with planned site-specific decommissioning activities. If a licensee were to consider a proposed decommissioning activity that would otherwise be prohibited by § 50.82(a)(6)(ii) or § 52.110(f)(2), then prior to undertaking that activity, the licensee could submit a request for a license amendment or an exemption request, decide not to perform the proposed activity, or modify the proposed activity so that the unbounded environmental impact does not occur. If the licensee chose to submit a license amendment or exemption request, then the request would trigger NRC responsibilities under environmental statutes. In addition, prior to performing a decommissioning activity that is inconsistent with the PSDAR but permitted by § 50.59, the licensee must notify the NRC in writing, with a copy to the affected States, in accordance with § 50.82(a)(7). This § 50.82(a)(7) requirement is in the current regulation and would not be changed in this proposed rule.

The NRC also proposes to change the § 50.82(a)(4)(i) and § 52.110(d)(1) regulations to allow licensees to use appropriate federally issued environmental review documents prepared in compliance with NEPA,

ESA, NHPA, or other environmental statutes instead of only EISs. One reason for replacing the phrase “previously issued environmental impact statements” with “federally issued environmental review documents” is the NRC can, in many instances, satisfy its NEPA compliance obligations by the preparation of an environmental assessment or through a categorical exclusion finding rather than preparing an EIS. A second reason is that this change allows licensees to use a wider range of documents that address various resources. Examples of appropriate federally issued environmental review documents include environmental assessments prepared for license amendments such as extended power uprates; documents prepared during Section 7 consultations under the ESA such as biological opinions and biological assessments; or programmatic agreements prepared through Section 106 consultations under the NHPA to resolve impacts to historic properties. Environmental review documents prepared by other Federal agencies could also be used if they were relevant to the impacts associated with the site-specific decommissioning activities.

The regulations in § 50.82(a)(6)(ii) and § 52.110(f)(2) prohibit a licensee from undertaking a decommissioning activity that would result in a *significant* environmental impact not previously reviewed. The NRC is also proposing to change § 50.82(a)(6)(ii) and § 52.110(f)(2) to clarify that the previous review of any potentially significant environmental impact must be bounded by appropriate federally issued environmental review documents prepared in compliance with NEPA, ESA, NHPA, or other environmental statutes. In this regard, the determination of significance should be made in terms of the appropriate federal environmental resource protection statute. For example, if a proposed decommissioning activity were likely to result in a potential adverse effect upon a historic property, as the term “adverse effect” is described in the Advisory Council on Historic Preservation regulation, 36 CFR 800.5, “Typical classes of action,” then that potential adverse effect would most likely be equivalent to a potential significant impact under § 50.82(a)(6)(ii) or § 52.110(f)(2). Similarly, for species listed under the ESA, the equivalent threshold would be a proposed decommissioning activity that could result in a “take,” as that term is defined in 16 U.S.C. 1532(19), of any listed species at the time of the proposed decommissioning activity.

These proposed changes would reduce the regulatory burden on the licensee by removing the duplicative requirement to address unbounded environmental impacts at the PSDAR stage. Instead, licensees would only prepare an environmental report or provide other information as requested by the NRC under § 51.41, “Requirement to submit environmental information,” before performing any decommissioning activity that is likely to result in a significant impact not previously bounded.

2. Consistency Changes to 10 CFR Part 51

Currently, § 51.53(d) requires that an applicant for a license amendment authorizing decommissioning activities for a production or utilization facility either for unrestricted use or continuing use restrictions submit an environmental report. The regulation at § 51.95(d) states that the NRC will prepare a supplemental EIS or an environmental assessment in connection with an amendment of a license to authorize decommissioning activities.

The 1996 Final Rule eliminated the requirement for nuclear power reactor licensees to seek NRC authorization for decommissioning. Therefore, there was no need for licensees to submit a license amendment or to prepare and submit a supporting environmental report, and thus no federal action that would require the NRC to prepare a NEPA document. In response to the 1995 decommissioning proposed rule, commenters suggested that revisions should be made to then-§ 51.53, “Supplement to environmental report,” and then-§ 51.95, “Supplement to final environmental impact statement,” to reflect the rule change. However, the NRC at that time decided not to amend the 10 CFR part 51 regulations because non-power reactor facilities were still required to submit a decommissioning plan.

The NRC proposes to revise 10 CFR part 51 to reflect the changes made in the 1996 Final Rule that nuclear power reactor licensees are not required to submit license amendment requests for authorization to perform decommissioning activities. In § 51.53(d), the NRC is proposing to remove language referencing an amendment for authorizing decommissioning activities and the requirement to prepare an environmental report for nuclear power reactors only. In § 51.95(d), the NRC is similarly proposing to remove language referencing an amendment for authorizing decommissioning activities.

The NRC further proposes to revise § 51.95(d) to indicate that the NRC would prepare the necessary NEPA document upon the submittal of a license amendment requesting approval of a license termination plan. The NRC also proposes to add a cross-reference to § 52.110 in § 51.53, “Postconstruction environmental reports,” as reactors licensed under 10 CFR part 52 will perform decommissioning under § 52.110, not § 50.82.

The NRC is not proposing to make any changes in 10 CFR part 51 that would impact non-power production or utilization facilities (e.g., research and test reactors) or fuel reprocessing plants. Non-power production or utilization facility and fuel reprocessing plant licensees must continue to submit a license amendment requesting approval for a decommissioning plan and to prepare and submit the appropriate supporting environmental report, and the NRC would continue to prepare the appropriate NEPA documentation.

I. Record Retention Requirements

The NRC’s regulations require nuclear power reactor licensees to retain the records associated with certain SSCs until the license is terminated and sometimes require that these records be kept in duplicate. To decrease the burden associated with long-term record storage and increase the overall efficiency of the decommissioning process, licensees that are transitioning to decommissioning frequently request exemptions from these requirements. Although this approach continues to meet the underlying purpose of the recordkeeping regulations, the process of preparing, submitting, and reviewing exemptions from the record retention requirements is not an efficient use of NRC or licensee resources given the fact that the subject records are no longer needed to support any NRC-regulated function. In addition, maintaining the current regulations with respect to record retention during decommissioning can create a situation wherein the facilities used to store records are ready to be dismantled in support of site decommissioning before the necessary exemptions can be processed. The NRC proposes to resolve these issues by amending its regulations in this rulemaking.

The recordkeeping requirements at issue include the following:

- Criterion XVII, “Quality Assurance Records,” of appendix B, “Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,” to 10 CFR part 50 requires licensees to retain certain records consistent with

regulatory requirements for a duration established by the licensees.

- Sections 50.59(d)(3) and 52.63(b)(2) require licensees to maintain certain records until termination of a license issued under 10 CFR part 50 or 10 CFR part 52.

- Section 50.71(c) requires licensees to maintain certain records consistent with various elements of the NRC regulations, facility TSs, and other licensing basis documents.

- Section 72.72(d) requires licensees to duplicate certain records of spent fuel and high-level radioactive waste and store them in a separate location sufficiently remote from the original records so that a single event would not destroy both sets.

Licensees that have previously requested exemptions from these requirements used the justification that, when the SSCs associated with these records are removed from service and the licensing basis documents, the SSCs will no longer serve any NRC-regulated function. Therefore, it would no longer be necessary to retain the records. In addition, several licensees requesting an exemption from the requirements of § 72.72(d) used the justification that they will store the ISFSI spent fuel records using the same procedures and processes used for the facility spent fuel (and other) records, which are typically stored in accordance with the NRC-approved quality assurance program (QAP).

The NRC granted the previous record retention exemptions based on a finding of reasonable assurance that the licensee would continue to meet the underlying purpose of the recordkeeping regulations, which is to establish the minimum retention periods necessary for the NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety. In “Retention Periods for Records; Final Rule” (53 FR 19240; May 27, 1988), the Commission explained that requiring licensees to maintain adequate records assists the NRC in judging compliance and noncompliance, to act on possible noncompliance, and to examine facts as necessary following any incident. Because the SSCs that were safety-related or important to safety during reactor operations or operation of the SFP are removed from the licensing basis, and subsequently removed from the plant during the decommissioning process, the records associated with those SSCs are no longer required to achieve the purpose of the recordkeeping and record retention regulations.

Records associated with SSCs that maintain compliance with requirements or that protect public health and safety during the decommissioning process have been excluded from these exemptions. Examples include those SSCs associated with programmatic controls pertaining to residual radioactivity, security, and quality assurance (QA), and those SSCs associated with spent fuel assemblies or the SFP (while assemblies are still in the pool) and ISFSIs. These exemptions do not affect the record retention requirements of § 50.75 or any other requirements of 10 CFR part 50 that apply to decommissioning.

Based on these exemptions, the NRC proposes to change the recordkeeping and record retention requirements such that once the NRC docket a licensee’s notifications of permanent cessation of operation and permanent removal of fuel from the reactor vessel under § 50.82(a)(2) or § 52.110(a), licensees can then eliminate records associated with SSCs that no longer serve any NRC-regulated function. The NRC would allow this record disposal as long as appropriate change mechanisms, such as the § 50.59 evaluation process or NRC-approved TS changes, are used to assess the removal of those records to determine that elimination of the records would have no adverse impact on public health and safety.

The records that would be subject to removal are associated with SSCs that had been important to safety during reactor operation or operation of the SFP, but that are no longer capable of causing an event, incident, or condition that would adversely impact public health and safety, as evidenced by their appropriate removal from the licensing basis documents. Since the SSCs no longer have the potential to cause these scenarios, it is reasonable to conclude that the records associated with these SSCs would not reasonably be necessary to assist the NRC in determining compliance, taking action on possible noncompliance, and examining facts following an incident. Therefore, retention of such records would not serve the underlying purpose of the recordkeeping regulations.

The NRC proposes to make the following four changes to the recordkeeping and record retention requirements and regulatory guidance to enhance the efficiency of the decommissioning regulations:

1. Clarify in RG 1.184, “Decommissioning of Nuclear Power Reactors,” that the requirements in appendix B to 10 CFR part 50, Criterion XVII, concerning record retention, such as duration, location, and assigned

responsibility, continue to be met with the recommended changes to the recordkeeping and record retention requirements.

2. Amend § 50.71(c) to specify that licensees for which the NRC has docketed the certifications required under § 50.82(a)(1) or § 52.110(a) are not required to retain records associated with SSCs that have been removed from service using an NRC-approved change process. However, § 50.71(c) would require licensees to retain records important to decommissioning as specified under § 50.75(g).

3. Amend §§ 50.59(d)(3) and 52.63(b)(2) to clarify that records of changes in the facility must be maintained until the termination of the license except for records associated with SSCs removed from service using an NRC-approved change process after the NRC has docketed the certifications required under § 50.82(a)(1) or § 52.110(a).

4. Amend § 72.72(d) to allow that records of spent fuel, high-level radioactive waste, and reactor-related greater than Class C (GTCC) waste containing special nuclear material no longer be kept in duplicate, as long as the licensee can demonstrate that it will store the records in the same manner as it would for other QA records using a single storage facility subject to the same procedures and processes outlined in an NRC-approved QAP.

In most cases, an NRC-approved QAP involves document storage requirements that meet American National Standards Institute (ANSI) standard N45 2.91974, “Requirements for Collection, Storage, and Maintenance of Quality Assurance Records,” which specifies, in part, the design requirements for use in the construction of record storage facilities when the use of a single storage facility is desired. In approving the associated QAP, the NRC typically approves the single facility location used for the storage and maintenance of QA records at the facility, and the licensee typically affirms in the QAP that the record storage facility was constructed and is being maintained to meet the requirements of the NRC-approved QAP.

Records for an ISFSI at a specific facility are typically classified as QA records and include all documents and records associated with the operation, maintenance, installation, repair, and modification of SSCs covered by the QAP. An ISFSI’s records also include historical records that have been gathered and collected during plant and ISFSI operations. These records are either required in support of the dry cask storage systems used at the ISFSI

or for ultimate shipment of the fuel to a Federal repository. The QAP typically allows the storage of QA records, including ISFSI records, to be done in accordance with ANSI N45 2.9–1974 in a single storage facility designed and maintained to minimize the risk of damage from adverse conditions.

The retention of records required by § 50.59(d)(3); § 52.63(b)(2); § 50.71(c); and appendix B to 10 CFR part 50, Criterion XVII provides assurance that records associated with SSCs will be captured, indexed, and stored in an environmentally suitable and retrievable condition. Although licensees retain the records required by their license as the plant transitions from operating conditions to a fully decommissioned state, plant dismantlement obviates the regulatory need for maintenance of most records. As the SSCs already removed from the licensing basis are subsequently dismantled and the need for the associated records is, on a practical basis, eliminated, the proposed rule changes would allow disposal of the records associated with SSCs and historical activities that are no longer relevant and thereby eliminate the associated regulatory and economic burdens of creating alternative storage locations, relocating records, or retaining irrelevant records. The proposed recordkeeping and record retention changes only expedite the schedule for disposition of the specified records. Considering the content of these records, their elimination on an advanced timetable has no reasonable potential of presenting any undue risk to public health and safety. In addition, upon dismantlement of the affected SSCs, the records have no functional purpose relative to maintaining the safe operation of the SSCs, maintaining conditions that would affect the ongoing health and safety of workers or the public, or informing decisions related to nuclear safety and security.

In addition, the proposed change to the portion of § 72.72(d) to eliminate the requirement for ISFSI licensees to keep a duplicate set of records for spent fuel in storage, would continue to meet the recordkeeping requirements of appendix B to 10 CFR part 50 and other applicable 10 CFR part 72 requirements for the storage and maintenance of spent fuel records in accordance with an NRC-approved QAP. Specifically, § 72.140(d) states that a QA program that the NRC has approved as meeting the applicable requirements of appendix B to 10 CFR part 50, will be accepted as satisfying the requirements of § 72.140(b) for establishing an ISFSI QA program. However, the licensee must also meet the recordkeeping provisions of

§ 72.174, “Quality assurance records.” In addition, the proposed rule change would not affect the record content, retrievability, or retention requirements specified in § 72.72, “Material balance, inventory, and records requirements for stored materials,” or § 72.174, such that the licensee will continue to meet all other applicable recordkeeping requirements for the ISFSI and associated special nuclear materials.

In proposing these rule changes, the NRC determined that the process and procedures used to store the ISFSI records (*i.e.*, in accordance with the QAP at a facility designed for protection against degradation mechanisms such as fire, humidity, and condensation) would help ensure that the licensee will adequately maintain the required spent fuel information. Therefore, changes to the duplicate record requirement of § 72.72(d) would not affect public health and safety. In addition, allowing the ISFSI spent fuel records to be stored in the same manner as that of other QA records for the nuclear facility would provide for greater efficiency in the storage of all records once the facility enters the final stages of decommissioning, where only the ISFSI facility would remain after license termination.

J. Low-Level Waste Transportation

Paragraph III.E of appendix G, “Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifests,” to 10 CFR part 20, “Standards for Protection Against Radiation,” contains requirements for investigating, tracing, and reporting shipments of low-level radioactive waste (LLW) if the shipper⁶ has not received notification of receipt within 20 days after transfer. In addition, paragraph III.E requires the shipper to report such missing shipments to the NRC. Licensees, primarily those that are involved in the decommissioning process, frequently request an exemption from the requirement related to the 20-day receipt notification window. The NRC proposes to amend this requirement to extend the receipt notification window because such an extension would provide licensees with flexibility while not impacting public

health and safety or the common defense and security.

Licensees that have previously been granted these exemptions typically requested extension of the investigation notification window to 45 days using the justification that operating experience indicates that, while the 20-day receipt notification window is adequate for waste shipments by truck, waste shipments using other modes of shipment such as rail, barge, or mixed-mode shipments, such as combinations of truck and rail, barge and rail, and barge and truck shipments, may take more than 20 days to reach their destination due to delays in the route that are outside the shipper’s control (*e.g.*, rail cars in switchyards waiting to be included in a complete train to the disposal facility). The NRC granted the previous transportation investigation requirement exemptions based on a finding of reasonable assurance that the shipper would continue to meet the underlying purpose of the LLW transportation regulations—to require the shipper to investigate, trace, and report radioactive shipments that have not reached their destination, as scheduled, for unknown reasons.

Under the current regulations, the shipper must investigate, trace, and report to the NRC any shipments of LLW for which the shipper has not received a notification of receipt within 20 days after transfer unless the shipper receives an exemption from the 20-day receipt notification requirement. The NRC has found that exempting licensees from this requirement does not undermine public health and safety, nor does it increase any security risk. Further, the preparation and submission of the exemption request, and its review, evaluation, and approval by the NRC, are not efficient uses of NRC or licensee resources. Specifically, the NRC notes that allowing the receipt notification to be made past 20 days would not impact public health, safety, or security even if the LLW transportation package was situated in a publicly accessible area and waiting for continuing transport to the waste disposal site because: (1) Individuals in the vicinity of the LLW transportation package would receive no additional radiological dose above background levels resulting from the disposal container; and (2) the LLW would remain secured in the transportation package until the package can be delivered to the waste disposal site. The NRC also notes that, for LLW waste shipments, most shippers will use an electronic data tracking system interchange or similar tracking systems that allow the carrier to monitor the

⁶ Paragraph III.E of appendix G to 10 CFR part 20 uses the term “shipper,” which the regulation defines to mean “the licensed entity (*i.e.*, the waste generator, waste collector, or waste processor) who offers low-level radioactive waste for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator.”

progress of the shipments daily. Because of the oversight and monitoring of radioactive waste shipments throughout the journey from the nuclear facility to the disposal site, the loss, misdirection, or diversion of a shipment without the knowledge of the carrier or the shipper is unlikely.

Therefore, the NRC proposes to change the requirement for the investigation, tracing, and reporting timeframe for LLW transportation to extend the receipt notification window to 45 days after the shipper transfers LLW from a licensed facility to a disposal site. This change would continue to meet the underlying purpose of appendix G to 10 CFR part 20, paragraph III.E, which requires the shipper to investigate, trace, and report LLW shipments that have not reached their destination, as scheduled, for unknown reasons. Furthermore, extending the time period for notification of receipt to 45 days before requiring investigation, tracing, and reporting, would maintain a reasonable upper limit on shipment duration if a breakdown of normal tracking systems were to occur, based on operating experience.

In addition, the NRC proposes correcting a typographical error in the current version of appendix G to 10 CFR part 20, paragraph III.E. Specifically, that paragraph states that LLW shipments must “be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer . . .” (emphasis added). The “or” should be an “of,” consistent with the subsequent discussions in 10 CFR part 20 regarding notifications of receipt and the associated exemptions granted in this area. Therefore, the NRC proposes correcting this error as part of this proposed rule for consistency and clarity within 10 CFR part 20.

K. Spent Fuel Management Planning

The regulation in § 72.218(a) states that the § 50.54(bb) spent fuel management program (*i.e.*, the irradiated fuel management plan or IFMP) must include a plan for removing from the reactor site the spent fuel stored under the 10 CFR part 72 general license. The IFMP must show how the spent fuel will be managed before starting to decommission systems and components needed for moving, unloading, and shipping this spent fuel. Section 72.218(b) requires that an application for termination of a reactor operating license submitted under § 50.82 or § 52.110 must also describe how the spent fuel stored under the 10 CFR part 72 general license will be removed from the reactor site. Although

§ 72.218 states what information the § 50.54(bb) IFMP and the § 50.82 and § 52.110 application for termination of a reactor operating license must include, the regulations in §§ 50.54(bb), 50.82, and 52.110 do not contain this information.

As §§ 50.54(bb), 50.82, and 52.110 do not reflect or otherwise reference the provisions in § 72.218, this causes regulatory uncertainty. The NRC proposes to clarify and align the regulations in §§ 50.54(bb), 50.82, 52.110, and 72.218 to provide regulatory clarity and enhance overall regulatory transparency and openness regarding decommissioning and spent fuel management planning.

1. Requirements for the IFMP in § 50.54(bb) and the PSDAR in § 50.82 and § 52.110

The PSDAR and IFMP are planning documents for decommissioning and spent fuel management, respectively. The current requirements for the timing of the submittal of the PSDAR and IFMP are similar, as the NRC’s regulations recognize that a licensee’s ability to plan properly and safely for decommissioning is closely related to the licensee’s ability to manage its spent fuel. Actions to manage spent fuel include activities taken prior to and subsequent to decommissioning. Therefore, a licensee’s spent fuel management plans and its decommissioning plans should be consistent.

Because § 50.54(bb) already addresses the topic of spent fuel management planning, the NRC proposes including the § 72.218 provisions in § 50.54(bb) to clarify that the § 50.54(bb) IFMP must be submitted by the licensee and approved by the NRC before the licensee starts to decommission SSCs needed for moving, unloading, and shipping the spent fuel. Additionally, the NRC proposes that the IFMP must be submitted prior to or within 2 years following permanent cessation of operations.

The NRC proposes to further restructure § 50.54(bb) to clarify that the IFMP addresses both the safety and financial aspects of managing spent fuel. The IFMP would describe the licensee’s planned actions for managing spent fuel, how those actions would be consistent with the NRC requirements for possession of spent fuel, and any actions related to spent fuel management that would require amendments to the license or certificate of compliance or exemptions from applicable regulations, which is consistent with the current rule language. The IFMP would also describe the projected cost of managing spent

fuel and how the licensee would provide funding for the management of the spent fuel, until title to, and possession of, the spent fuel is transferred to the Department of Energy (DOE), which is also consistent with the current rule language. The regulation in § 50.54(bb) would also continue to require licensees to retain a copy of the IFMP as a record, and the NRC proposes to clarify that the IFMP must be retained until termination of the 10 CFR part 50 or 10 CFR part 52 license.

The NRC proposes to clarify the current IFMP approval process and the § 50.54(bb) provisions regarding preliminary approval and final NRC review of the IFMP as part of any proceeding for continued licensing under 10 CFR part 50 or 10 CFR part 72. With regard to the NRC’s final review of the IFMP “as part of any proceeding for continued licensing under 10 CFR part 50 or 10 CFR part 72,” these proceedings no longer exist as they did when § 50.54(bb) was first promulgated in 1984. In the 1984 Final Rule, the Commission discussed the “proceeding for continued licensing under part 50” as the pre-1996 reactor decommissioning process, where licensees were required to submit a license amendment request for approval of the decommissioning plan and to change the license from an operating license to a possession-only license before licensees could begin decommissioning. The NRC noted in the 1984 Final Rule that the IFMP would become part of the conditions of an amended 10 CFR part 50 license for a shutdown reactor facility. After the 1996 rulemaking, the NRC no longer requires submittal of a license amendment when a reactor ceases operations, and thus, there is no longer a “proceeding for continued licensing under part 50” for the NRC to review and approve the IFMP.

The 1984 Final Rule discusses the “proceeding for continued licensing under part 72” as the application for, and NRC issuance of, a 10 CFR part 72 specific license for storage of spent fuel in an ISFSI. The 1984 issuance of § 50.54(bb) preceded the general license ISFSI provisions, which were added to 10 CFR part 72 in 1990. Regarding the 10 CFR part 72 general license, storage of spent fuel in a general license ISFSI is authorized by operation of law via § 72.210, so there is no NRC “licensing proceeding” or approval needed for the 10 CFR part 72 general license. As most reactor licensees use the 10 CFR part 72 general license for storage of spent fuel in an ISFSI, there would be no “proceeding for continued licensing under part 72” for the NRC to review

and approve the IFMP. Therefore, the NRC proposes to require submittal of the IFMP to the NRC as a license amendment request. The NRC also proposes to require licensees to submit to the NRC any changes to the IFMP as an application for an amendment to its license.

2. Requirements in § 72.218 for Termination of the General License for Spent Fuel Storage

Because the current spent fuel management planning provisions of § 72.218 are initiated by reactor shutdown and are related to reactor decommissioning, the requirements fit best in 10 CFR part 50 and are not necessarily needed in 10 CFR part 72. Therefore, as the NRC proposes adding the spent fuel management provisions from § 72.218 into § 50.54(bb), the NRC also proposes deleting those provisions from § 72.218. In addition, the NRC proposes revising § 72.218 to address requirements related to termination of the 10 CFR part 72 general license, as the current title of § 72.218, “Termination of licenses,” suggests.

The 10 CFR part 72 general license is issued to 10 CFR part 50 or 10 CFR part 52 licensees, per the regulation in § 72.210. It follows that the 10 CFR part 72 general license would terminate coincident with the termination of the 10 CFR part 50 or 10 CFR part 52 license. In addition, since the general license ISFSI is part of the 10 CFR part 50 or 10 CFR part 52 licensed site, decommissioning of the general license ISFSI would follow the reactor decommissioning process in § 50.82 or § 52.110, respectively. This approach would also be consistent with the NRC’s approach to ISFSI decommissioning funding as discussed in the “*Decommissioning Funding Assurance*” section of this document.

However, to provide regulatory clarity between 10 CFR parts 50, 52, and 72 in terms of decommissioning and termination of the 10 CFR part 72 general license, the NRC proposes to revise § 72.218 to include the following provisions: (1) The general license ISFSI must be decommissioned consistent with the requirements in § 50.82 or § 52.110; and (2) the general license is terminated upon termination of the 10 CFR part 50 or 10 CFR part 52 license. This proposed change would provide regulatory clarity among 10 CFR parts 50, 52, and 72 in terms of decommissioning and termination of the 10 CFR part 72 general license, analogous to the provision in § 72.210 that ties the issuance of the 10 CFR part 72 general license to the existence of the

10 CFR part 50 or 10 CFR part 52 license.

L. Backfit Rule

For nuclear power reactor licensees, the NRC’s backfitting provisions are located in § 50.109, “Backfitting,” and the issue finality provisions are in 10 CFR part 52 (hereinafter collectively referred to as the “Backfit Rule”). The language of the Backfit Rule clearly applies to a licensee designing, constructing, or operating a nuclear power facility. For example, § 50.109(a)(1) defines “backfitting” to mean changes to, among other things, the procedures or organization required to design, construct or operate a facility. The application of the Backfit Rule to decommissioning plants is not as clear. In SECY–98–253, “Applicability of Plant-Specific Backfit Requirements to Plants Undergoing Decommissioning,” dated November 4, 1998 (ADAMS Accession No. ML992870107), the NRC staff presented the Commission with a list of reasons underlying this uncertainty:

- The Backfit Rule has no end point when the rule no longer applies, “thereby implying that backfit protection continues into decommissioning and up to the point of license termination.”
- The term “operate” could reasonably be interpreted as including activities to decommission the reactor.
- The Backfit Rule was developed when the decommissioning of plants was not an active area of regulatory concern.
- The Backfit Rule’s definition of “backfitting” uses terms associated with the design, construction, and operation of a facility rather than with its decommissioning, although the staff noted in SECY–98–253 that “prior to the 1996 decommissioning rule, the Commission regarded decommissioning as a phase of the plant’s life cycle which is different from the operational phase.”
- Two of the factors used in evaluating a backfit—costs of construction delay/facility downtime, and changes in plant/operational complexity—are targeted to power operation and are “conceptually inappropriate in evaluating the impacts of a backfit on a decommissioning plant.”
- The SOC for the 1970 (35 FR 5317; March 31, 1970), 1985 (50 FR 38097; September 20, 1985), and 1988 (53 FR 20603; June 6, 1988) final Backfit Rules did not discuss any aspect of decommissioning, focusing instead on construction and operation.
- Proposed changes to decommissioning requirements usually

focused on relaxing a requirement or on whether a requirement applicable to an operating reactor continued to be applicable to a decommissioning plant. Thus, “the notion of a ‘substantial increase’ in protection to public health and safety from a backfit does not appear to be particularly useful [in decommissioning].”

- The 1996 Final Rule did not directly respond to questions from the public on the applicability of the Backfit Rule to a decommissioning plant.

Over the years, the NRC has tried to clarify the applicability of the Backfit Rule to nuclear power reactor licensees in decommissioning. In SECY–98–253, the NRC staff requested Commission approval to amend § 50.109, among other regulations, so that the Backfit Rule would clearly apply to licensees in decommissioning. In that paper, the NRC staff also proposed that, until the rulemaking was finished, the staff would apply the Backfit Rule to plants undergoing decommissioning “to the extent practical.”

In the February 12, 1999, SRM for SECY–98–253 (ADAMS Accession No. ML003753746), the Commission approved development of a Backfit Rule for plants undergoing decommissioning. The Commission directed the NRC staff to continue to apply the then-current Backfit Rule to plants undergoing decommissioning until issuance of the final rule. The Commission directed the staff to develop a rulemaking plan, which the staff transmitted to the Commission in SECY–00–0145. In SECY–00–0145, the NRC staff proposed, among other decommissioning-related amendments to its regulations, amendments to § 50.109 to show clearly that the Backfit Rule applies during decommissioning and to remove factors that are not applicable to nuclear power plants in decommissioning. As explained in the section titled “*Actions Leading to this 2018 Proposed Rule*” in this document, the NRC ultimately did not conduct that rulemaking. Therefore, the NRC has continued to apply the Backfit Rule to licensee facilities undergoing decommissioning to the extent practical.

In addition to the Commission direction to clarify the application of the Backfit Rule for decommissioning nuclear power reactor licensees, the NRC’s regulatory framework also supports application of the Backfit Rule to nuclear power reactor licensees in decommissioning. Under sections 101 and 103a. of the AEA (42 U.S.C. 2131 and 2133a.), the NRC’s issuance of a nuclear power reactor operating license under 10 CFR part 50 or a combined license under 10 CFR part 52 grants the

holder a license to, among other things, own, possess, and operate a “production facility” or “utilization facility,” as those terms are defined in section 11 of the AEA. Once the licensee under 10 CFR part 50 or 10 CFR part 52 submits its certifications of permanent cessation of reactor operations and permanent removal of fuel from the reactor vessel and the NRC docket those certifications, the licensee is no longer authorized to operate the reactor under § 50.82(a)(2) or § 52.110(b), respectively. The license is no longer an “operating license” for the reactor because the licensee is not operating a production or utilization facility pursuant to sections 101 and 103a. of the AEA. Instead, as described in § 50.51(b) for 10 CFR part 50 licenses and § 52.109, “Continuation of combined license,” for 10 CFR part 52 combined licenses, when the reactor has permanently ceased operations, the license continues in effect beyond the expiration date and authorizes ownership and possession of the facility until the Commission terminates the license. Thus, when the licensee is no longer authorized to operate the reactor, it retains its possession and ownership authority under its 10 CFR part 50 or 10 CFR part 52 facility license.

Although a decommissioning licensee’s license no longer authorizes operation of the reactor because the licensee is not operating a production or utilization facility, the licensee still must “operate” certain SSCs at the site. Under § 50.51(b) (with a similar requirement in § 52.109 for combined license holders), when the licensee has only a possession and ownership license for the reactor, the licensee must not only decommission and decontaminate the facility, but also continue to maintain the facility, including storing, controlling and maintaining the spent fuel in a safe condition. Therefore, nuclear power reactor licensees store, control, and maintain spent fuel after permanent cessation of reactor operations through the “operation” of an SFP and ISFSI.

Although § 50.109(a)(1) defines “backfitting” as changes to, among other things, the procedures or organization required to design, construct, or operate a facility, indicating that the Backfit Rule applies only to a holder of a license to “operate a facility,” the language of § 50.51(b) shows that “operating a facility” can be interpreted to mean more than just operating a reactor. This is supported by the Commission direction in the SRM for SECY-98-253 that the NRC staff develop a Backfit Rule for plants undergoing decommissioning (*i.e.*, when the licensee no longer operates a

reactor) and continue to apply the then-current Backfit Rule to plants undergoing decommissioning until issuance of the final rule. Thus, the Backfit Rule still applies to a licensee that has a license to only possess and own a facility. For a facility in decommissioning, the phrase “operate a facility” in § 50.109(a)(1) is read to encompass operating the SFP and associated SSCs necessary for compliance with § 50.51(b).

As the Commission and the NRC staff recognized in the 1990s, certain provisions of the Backfit Rule do not clearly apply to nuclear power reactor licensees in decommissioning. In this proposed rule, the NRC proposes to complete the process begun two decades ago to clarify the application of the Backfit Rule to nuclear power reactor licensees in decommissioning.

The NRC proposes to amend § 50.109 so that nuclear power reactor licensees, which have had their § 50.82(a)(1) or § 52.110(a) certifications docketed by the NRC, are the subject of similar backfitting provisions as they were during their operating phase. A new backfitting provision for licensees in decommissioning would eliminate any confusion with the meaning of the words “operate a facility” in § 50.109(a)(1), as compared to other uses of the term “operate” in 10 CFR Chapter I.

The NRC would make other revisions to § 50.109. To make the section easier to read, the NRC proposes to insert paragraph headings. The NRC would remove current § 50.109(b) regarding backfits imposed prior to October 21, 1985, because the language is obsolete and no longer needed. In the current § 50.109(a)(6), the NRC proposes to insert a sentence explaining that a documented evaluation, which is used by the NRC to justify not performing a backfit analysis, must include a consideration of the costs of imposing the backfit if the basis for backfitting is bringing a facility into compliance with a license or the rules or orders of the Commission, or into conformance with the licensee’s written commitments.

Further, the NRC proposes to make conforming changes to § 72.62 to clarify that the corresponding backfit regulations in part 72 apply during the decommissioning of an ISFSI or a Monitored Retrievable Storage facility subject to those provisions.

M. Foreign Ownership, Control, or Domination

The NRC is proposing to amend its regulations to address the circumstances when a facility licensed under 10 CFR part 50 or 10 CFR part 52 no longer

meets the definition of a utilization facility or a production facility. The AEA has certain requirements specific to utilization or production facilities. By clarifying when a 10 CFR part 50 or 10 CFR part 52 licensed facility is no longer a utilization or a production facility, the NRC can then specify whether these AEA requirements still apply to the licensee for that facility. For instance, the AEA prohibits the issuance of a license for a utilization or a production facility to an entity that the Commission knows or has reason to believe is foreign owned, controlled, or dominated. The Commission’s regulations that implement this prohibition, however, are unclear as to when a facility undergoing decommissioning is no longer a utilization or a production facility. Given this uncertainty, licensees have requested exemptions from § 50.38, “Ineligibility of certain applicants,” to transfer 10 CFR part 50 licenses for facilities that no longer meet the definition of utilization facility. The NRC proposes to amend its regulations to clarify when a facility licensed under 10 CFR part 50 or part 52 is not considered a production or utilization facility and therefore, the FOCD prohibition no longer applies.

The NRC’s regulations in 10 CFR parts 50 and 52 provide for the issuance of a 10 CFR part 50 license for a utilization or a production facility and a 10 CFR part 52 license for a utilization facility. The AEA defines “utilization facility” as:

(1) Any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

The AEA defines “production facility,” in part, as:

(1) Any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

As authorized by the AEA, the Commission has a rule defining utilization facility and production

facility. In § 50.2, a utilization facility is defined as either (1) any nuclear reactor other than one designed or used primarily for the formation of plutonium or U-233; or (2) an accelerator-driven subcritical operating assembly used for the irradiation of materials containing special nuclear material and described in the application for the SHINE Medical Isotope Production Facility. A production facility is defined as a nuclear reactor designed or used primarily for the formation of plutonium or uranium-233; with certain exceptions not relevant here, a facility designed or used for the separation of the isotopes of plutonium; or, with certain exceptions not relevant here, a facility designed or used for the processing of irradiated materials containing special nuclear material.

NRC case law provides insight as to when a facility licensed under 10 CFR part 50 or 10 CFR part 52 is no longer a utilization or a production facility. In LBP-84-33, *Cincinnati Gas & Electric Co.* (Wm. H. Zimmer Nuclear Power Station, Unit 1), 20 NRC 765 (1984), an Atomic Safety and Licensing Board granted the licensee's motion to withdraw its application for a 10 CFR part 50 operating license for a nuclear power reactor, despite the fact that the facility was almost completely built. One of the conditions for granting the motion was that the nuclear steam supply system be modified to prevent the facility's operation as a utilization facility. The Board determined that because a utilization facility under the AEA is a facility that is capable of making use of special nuclear material, the facility must be modified to eliminate that capability for it to no longer be categorized as a utilization facility. The Board observed that this can be achieved, for example, by severing and welding caps on main feedwater lines and main steam lines and removing the fuel and the control rod drive mechanisms.

The NRC proposes to add to its regulations language similar to the *Zimmer* decision to establish the criteria for when a facility licensed under 10 CFR part 50 or 10 CFR part 52 no longer meets the statutory or regulatory definition of a utilization or a production facility (*i.e.*, is no longer capable of making use of special nuclear material or of the production of special nuclear material, separation of the isotopes of plutonium, or processing of irradiated materials containing special nuclear material (hereinafter collectively referred to as production-facility activities)). The first criterion is that the facility must not be legally

authorized to operate. The second criterion is the physical modification of the licensed facility to be incapable of making use of special nuclear material and of production-facility activities, without significant facility alterations necessary to restore the capability to make use of special nuclear material or to engage in production-facility activities. When a utilization facility is physically modified to be incapable of making use of special nuclear material, it is no longer designed or used to sustain nuclear fission in a self-supporting chain reaction.

Sections 50.82(a)(2) and 52.110(b) already provide for the first criterion for nuclear power reactor licensees—that the facility is no longer legally authorized to operate. Sections 50.82(a)(2) and 52.110(b) state, respectively, that a 10 CFR part 50 license and a 10 CFR part 52 license no longer authorize operation of the reactor or emplacement or retention of fuel into the reactor vessel once the NRC has docketed the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, or when a final legally effective order to permanently cease operations has come into effect. The NRC would amend these regulations to add the second criterion—that the facility licensed under 10 CFR part 50 or 10 CFR part 52 is no longer a utilization facility once the licensee modifies the facility to be incapable of making use of special nuclear material without significant facility alterations.

Because the NRC's regulations do not state when a non-power production or utilization facility or fuel reprocessing plant licensee is no longer authorized to operate (other than at license termination), the NRC proposes to amend § 50.82(b) to add the criteria for when a non-power production or utilization facility or fuel reprocessing plant is no longer a production or utilization facility. The NRC would renumber current paragraph (b)(6) in § 50.82 as paragraph (b)(8) and add new paragraphs (b)(6) and (b)(7). New paragraph (b)(6) would provide that a non-power production or utilization facility or fuel reprocessing plant is not legally capable of operating when the NRC removes the licensee's authority to operate the facility through a license amendment. The NRC can remove a non-power production or utilization facility or fuel reprocessing plant licensee's authority to operate by issuing a possession-only license amendment or by approving the licensee's decommissioning plan through a license amendment, either of which would explicitly remove the

licensee's authority to operate. Licensees typically request a possession-only license amendment first and then submit a decommissioning plan via a second license amendment request. This proposed rule would offer licensees the option to request only one licensing action—the decommissioning plan license amendment—that also would address the licensee's operating authority, rendering a separate "possession-only license amendment" unnecessary. To address those instances when the licensee is still operating the facility when the licensee submits its decommissioning plan license amendment request, the decommissioning plan license amendment would itself identify the date on which the authority to operate is removed.

The NRC would also include in new § 50.82(b)(6) the second criterion for when the non-power production or utilization facility or fuel reprocessing plant is no longer a production or a utilization facility (*i.e.*, once the licensee modifies the facility to be incapable of production-facility activities and making use of special nuclear material without significant facility alterations).

The NRC would add new § 50.82(b)(7) and amend § 50.82(a)(2) and § 52.110(b) to affirm the continuation of the NRC's statutory authority over the existing 10 CFR part 50 or 10 CFR part 52 license after the performance of decommissioning activities that lead to the licensed facility no longer meeting the definition of a utilization or a production facility. This facility transition occurs with every licensee during decommissioning. Eventually, the facility will be dismantled to the point where it is incapable of making use of special nuclear material or of production-facility activities without significant facility alterations.

Although the facility licensed under 10 CFR part 50 or 10 CFR part 52 may no longer be a utilization or a production facility, the NRC maintains the authority to regulate the existing 10 CFR part 50 or 52 license. A 10 CFR part 50 operating license for a production or utilization facility is issued under AEA sections 103 or 104, and a 10 CFR part 52 combined license for a utilization facility is issued under AEA sections 103 and 185b. That license may contain authorities beyond those governed by 10 CFR parts 50 or 52. Under § 50.52, "Combining licenses," the Commission may combine in a single license the activities that would otherwise be licensed under separate licenses. Accordingly, a typical 10 CFR part 50 or 52 nuclear power reactor license also

includes in a single license the authority under 10 CFR parts 30, 40, and 70 of the NRC's regulations to perform activities or possess materials authorized by those parts. Parts 30, 40, and 70 of 10 CFR are authorized by sections 81, 63, and 53 of the AEA and concern the licensing of byproduct, source, and special nuclear materials, respectively. A typical 10 CFR part 50 non-power production or utilization facility license also includes the authority under 10 CFR parts 30 and 70 of the NRC's regulations to perform activities or possess materials authorized by those parts. When the facility is no longer a production or utilization facility, the NRC maintains the authority to regulate the facility and the 10 CFR part 50 or 52 license under a combination of AEA sections 53, 63, 81, and 161. Sections 50.51(b) and 52.109 of the NRC's regulations also establish that the 10 CFR part 50 or 52 license continues in effect until the NRC terminates the license, notwithstanding the fact that at some point in time during the dismantlement required for license termination, the licensed facility will be disassembled to such an extent that it no longer satisfies the definition of a utilization or a production facility. Therefore, the NRC would amend § 50.82(a)(2), § 50.82(b), and § 52.110(b) to explicitly cite these statutory provisions as the basis for its retention of the authority to regulate the existing 10 CFR parts 50 or 52 facility. The NRC proposes to make conforming changes to the authority citations for 10 CFR parts 50 and 52 to add sections 53, 63, and 81 of the AEA.

The NRC proposes to amend § 50.82(a)(2), § 50.82(b), and § 52.110(b) to state which requirements apply to the existing 10 CFR part 50 or 52 license after the licensed facility is no longer a utilization or a production facility. As provided by section 161b of the AEA, the Commission is authorized to establish by regulation such standards to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Consistent with this statutory authority, the proposed amendments to § 50.82(a)(2), § 50.82(b), and § 52.110(b) will make clear that, after the facility licensed under 10 CFR part 50 or 52 is no longer a utilization or a production facility and until the termination of the 10 CFR part 50 license pursuant to § 50.82(a)(11) or § 50.82(b)(8) or the 10 CFR part 52 license pursuant to § 52.110(k), the NRC regulations

applicable to utilization or production facilities will continue to apply to the holder of the 10 CFR part 50 or 10 CFR part 52 license, as applicable, unless those regulations explicitly state otherwise. These proposed amendments would enable a licensee to maintain reasonable assurance of adequate protection of the common defense and security and the public health and safety by requiring the licensee to continue to comply with those regulations applicable to utilization or production facilities, as applicable to that licensee, unless stated otherwise.

The NRC has identified that § 50.38 should not apply to a facility that is no longer a utilization or a production facility. Specifically, the AEA prohibits the issuance of a license for a utilization or a production facility to an entity that the Commission knows or has reason to believe is foreign owned, controlled, or dominated. However, since the FOCD prohibition only applies to a utilization or production facility, it would not apply once a 10 CFR part 50 or part 52 facility is no longer a utilization or a production facility. Therefore, the NRC is proposing to amend § 50.38 such that its prohibition on transferring a license to an entity that the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, is not applicable if the license is a 10 CFR part 50 or 10 CFR part 52 license for a facility that no longer meets the definition of a utilization or a production facility.

Section 50.80 governs the transfers of 10 CFR part 50 and 10 CFR part 52 licenses for production and utilization facilities. It requires the written consent of the NRC before the transfer of a production or utilization facility. This section also requires applicants for a license transfer to provide the same identifying, technical, and financial information that an initial license applicant is required to provide under §§ 50.33 and 50.34. In particular, § 50.33 requires an application to state the citizenship of the applicant. Under § 50.38, the applicant is ineligible to apply for and obtain a license if it is a foreign entity.

Section 50.38 implements sections 103 and 104 of the AEA, which provide in part that a license for a utilization or production facility may not be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. Since sections 103 and 104 of the AEA apply to utilization and production facilities, the NRC is proposing to

amend § 50.38 to clarify that this prohibition does not apply to a person, corporation, or other entity seeking a license for a facility that is no longer a utilization or a production facility, as would be provided under revised § 50.82(a)(2), § 50.82(b)(6), or § 52.110(b).

The proposed amendment to § 50.38 would maintain the common defense and security and public health and safety because, even though § 50.38 would not prohibit the transfer to foreign entities of 10 CFR part 50 and 10 CFR part 52 licenses for facilities that do not meet the definition of utilization or production facility, other regulations ensure that such transfers would not be inimical to the common defense and security or to the health and safety of the public. For instance, § 50.80(c) states that the Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to be the holder of the license and that the transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. In turn, under § 50.57 or § 52.97, the Commission may issue a 10 CFR part 50 or 10 CFR part 52 license, respectively, only if the Commission finds that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.

The proposed amendment to § 50.38 is consistent with how the NRC analyzed requests for exemptions from § 50.38 for Maine Yankee Atomic Power Station, Haddam Neck Plant, and Yankee Nuclear Power Station (78 FR 58571; September 24, 2013). Specifically, the NRC granted those exemptions because the reactor facilities had been dismantled and removed such that only ISFSIs remained on site; an ISFSI, whether licensed under 10 CFR parts 50 or 72, is not capable of making use of special nuclear material; and the AEA definition of a utilization facility does not include ISFSIs. The NRC found that the foreign ownership, control, or domination prohibition did not apply to ISFSIs and, thus, did not preclude the NRC from granting the exemptions.

The NRC is also proposing to amend §§ 50.1, 50.51, 52.0, and 52.109 in light of the proposed amendments to §§ 50.38, 50.82, and 52.110. The proposed amendments would make clear that the regulations in 10 CFR part 50, and the similar regulations in 10 CFR part 52, provide not only for the licensing of utilization and production facilities, but also for their decommissioning and the termination of their associated licenses. These changes

are clarifications; 10 CFR part 50 has included decommissioning and license termination since 1961 (“Creditors’ Rights; and Transfer, Surrender, and Termination of Licenses,” 26 FR 9546; October 10, 1961). The NRC proposes to delete the language in §§ 50.51 and 52.109 that discusses what 10 CFR parts 50 and 52 licenses authorize in lieu of the more complete discussion provided in the proposed amendments to § 50.82(a)(2), § 50.82(b)(6) and (7), and § 52.110(b).

The NRC is proposing to add a specific definition for “non-power production or utilization facility” to § 50.2 to establish a term that is flexible enough to capture all non-power facilities licensed under § 50.22, “Class 103 licensees; for commercial and industrial facilities,” and § 50.21(a) or (c), except fuel reprocessing facilities. This proposed rule would address inconsistencies in definitions and terminology associated with non-power production and utilization facilities in § 50.2 that result in challenges in determining the applicability of the regulations. Fuel reprocessing plants would be excluded from the definition because the consequences associated with the hazards at a fuel reprocessing plant would likely exceed those anticipated at the facilities within the “non-power production or utilization facility” definition, thereby affecting the applicability of the “non-power production or utilization facility” term.

The only NRC-licensed fuel reprocessing plant is the Western New York Nuclear Service Center. The technical specifications of its NRC license are currently suspended by license amendment. Under the West Valley Demonstration Project Act, Public Law 96–368, 94 Stat. 1347 (codified as a note to 42 U.S.C. 2021a), the Department of Energy (DOE) is currently decommissioning portions of the plant. The NRC licensee, the New York State Energy Research and Development Authority, will complete the decommissioning work after DOE has completed its work. There is currently no application for another fuel reprocessing plant and the NRC does not anticipate any application in the foreseeable future.

The NRC proposes to revise the introductory text of § 50.82(b) to replace the term “non-power reactor licensees” with “non-power production or utilization facility licensees and fuel reprocessing plants” to ensure that all non-power facilities licensed under § 50.22 or § 50.21(a) or (c) are subject to the relevant termination and decommissioning regulations.

N. Clarification of Scope of License Termination Plan Requirement

The NRC is proposing to amend its regulations to clarify that the requirement for a license termination plan in § 50.82(a)(9) and § 52.110(i) applies only to nuclear power reactor licensees that commenced operation. This clarification is being proposed in response to apparent confusion among combined license holders that have sought to surrender their licenses before operation. By letter dated November 1, 2017 (ADAMS Accession No. ML17311A143), Duke Energy Florida informed the NRC that it would seek termination of the 10 CFR part 52 combined licenses for Levy Nuclear Plant Units 1 and 2 and would submit a license termination plan in accordance with § 52.110(i). Subsequently, South Carolina Electric & Gas Company (SCE&G) submitted a letter dated December 27, 2017 (ADAMS Accession No. ML17361A088), seeking withdrawal of the 10 CFR part 52 combined licenses for Virgil C. Summer Nuclear Station Units 2 and 3. The SCE&G request neither cited § 52.110 nor indicated that it would submit a license termination plan. Instead, SCE&G cited the Commission’s final “Policy Statement on Deferred Plants” (52 FR 38077; October 14, 1987) (Policy Statement) to support its request for NRC approval to withdraw its combined licenses. The Policy Statement addresses holders of construction permits that defer or terminate plant construction. The Policy Statement provides that a permit holder can request to withdraw its permit and does not cite to the license termination provisions in 10 CFR part 50. The Policy Statement was issued prior to the promulgation of 10 CFR part 52 and has not been updated since, but there is nothing to prevent holders of a combined license from following the applicable parts of the Policy Statement while continuing to comply with the Commission’s regulations and the terms and conditions of the combined license.

The requirement for a license termination plan in § 52.110(i) does not apply to plants that have not begun operating. While § 52.110(i) does refer to “[a]ll power reactor licensees,” the regulatory history and context indicates that § 52.110 as a whole applies only to plants that have started operation:

- The organization of § 52.110 generally follows the license termination process for an operating plant, from permanent cessation of operations to permanent removal of fuel to decommissioning activities to license termination. The requirement for a

license termination plan should be understood in this context.

- The vast majority of the requirements in § 52.110 (including § 52.110(i)) either explicitly refer to, or make sense only in the context of, a plant that has operated and is undergoing decommissioning.

- The “[a]ll power reactor licensees” language also appears in § 50.82(a)(9), the 10 CFR part 50 analogue to § 52.110(i). But the NRC does not apply the similar requirements in § 50.82 to holders of construction permits even though construction permits fall within the definition of “License” in § 50.2. For example, the following construction permit terminations do not cite or otherwise address § 50.82: “Washington Public Power Supply System, Washington Nuclear Project, Unit 3; Order Revoking Construction Permit No. CPPR–154” (64 FR 4725; January 29, 1999); “Bellefonte Nuclear Plant, Units 1 and 2—Withdrawal of Construction Permit Nos. CPPR–122 for Unit 1 and CPPR–123 for Unit 2” (September 14, 2006) (ADAMS Accession No. ML061810505); and “Energy Northwest Nuclear Project No. 1—Termination of Construction Permit CPPR–134” (February 8, 2007) (ADAMS Accession No. ML070220011). And the rule issuing the “[a]ll power reactor licensees” language in § 50.82(a)(9)—the 1996 Final Rule—was directed at holders of operating licenses, not construction permits.

- According to the final rule issuing § 52.110, “Licenses, Certifications, and Approvals for Nuclear Power Plants” (72 FR 49351; August 28, 2007), § 52.110 and its companion regulation § 52.109 were intended to be analogous to the requirements in § 50.51 and § 50.82 for permanent shutdown of a nuclear power plant, its decommissioning, and the termination of the operating license.

For these reasons, § 52.110 is best understood to apply only to plants that began operation. However, to avoid confusion over the license termination plan requirement, the NRC proposes to amend § 52.110(i) so that it explicitly applies only to “power reactor licensees that have loaded fuel into the reactor.” As stated in the “Final Procedures for Conducting Hearings on Conformance With the Acceptance Criteria in Combined Licenses” (81 FR 43266; July 1, 2016), the NRC has historically understood operation as beginning with the loading of fuel into the reactor. Therefore, § 52.110(i) would apply to 10 CFR part 52 nuclear power reactor licensees that have begun to load fuel into the reactor.

A conforming change is also proposed in § 50.82(a)(9) to clarify that the requirement in that provision—that all 10 CFR part 50 nuclear power reactor licensees must submit an application for termination of license—applies to only those 10 CFR part 50 nuclear power reactor licensees that have loaded fuel into the reactor.

O. Removal of License Conditions and Withdrawal of Orders

The NRC is proposing to withdraw orders and remove license conditions that are substantively redundant with provisions in 10 CFR. Although NRC orders generally provide for their relaxation or rescission on a licensee-specific basis, use of that process would be an inefficient and unnecessary administrative burden on licensees and the NRC—with no impact on public health and safety—when a subsequent rule replaces the orders in their entirety for all applicable licensees. Therefore, the NRC is proposing to find that good cause is shown to rescind Order EA–06–137, “Order Modifying Licenses” (ADAMS Accession No. ML061600076), concerning mitigation strategies for large fires or explosions at nuclear power plants. This order was issued to certain licensees who received Order EA–02–026, “Order for Interim Safeguards and Security Compensatory Measures” (ADAMS Accession No. ML020510635), which required licensees to take specific interim compensatory measures, including mitigation strategies for large fires or explosions at nuclear power plants, in light of the then-high-level threat environment. Order EA–06–137 required that licensees to incorporate key mitigation strategies for large fires or explosions into their security plans. The requirement that these strategies be incorporated in security plans was subsequently relaxed by letter dated August 28, 2006, which permitted licensees to consent to having their licenses amended to incorporate a license condition on the subject. Several licensees had these license conditions imposed by administrative license amendment (e.g., “Browns Ferry Nuclear Plant, Units 1, 2, and 3—Conforming License Amendments To Incorporate the Mitigation Strategies Required by Section B.5.b. of Commission Order EA–02–026 and the Radiological Protection Mitigation Strategies Required by Commission Order EA–06–137,” dated August 16, 2007). In its Power Reactor Security Requirements final rule, the NRC established in § 50.54(hh)(2) a regulation that provides a performance-based requirement that encompasses the

mitigation strategies required under Order EA–06–137 and its associated license condition. The Mitigation of Beyond-Design-Basis Events rule subsequently moved § 50.54(hh)(2) to § 50.155(b)(3). As a result, neither Order EA–06–137 nor the license condition is necessary. Accordingly, the NRC proposes finding that good cause is shown to rescind Order EA–06–137 for each licensee that received the order. In addition, because § 50.155(b)(3) provides the same requirements as the license condition associated with Order EA–06–0137, the NRC proposes deeming the license condition removed from each applicable nuclear power reactor license.

Order EA–02–026 included a section, numbered B.5.b, in its attachment 2, requiring mitigation strategies for large fires or explosions at nuclear power plants. Extensive interactions among the NRC, industry, and licensees refined the strategies required by the order. In 2007, the NRC issued to all then-operating nuclear power reactor licensees an administrative license amendment (e.g., “Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2—Conforming License Amendments to Incorporate the Mitigation Strategies Required by Section B.5.b. of Commission Order EA–02–026,” dated July 11, 2007), containing a license condition entitled, “Mitigation Strategy License Condition,” which required licensees to use 14 mitigation strategies. In the Power Reactor Security Requirements final rule, the NRC established in §§ 50.54(hh), 50.34(i), and 52.80(d) regulations that made the requirements of Order EA–02–026 generically applicable to nuclear power reactor licensees and applicants. In the Power Reactor Security Requirements final rule, the Commission explained that operating nuclear power reactor licensees already had procedures in place that complied with the new § 50.54(hh)(2). Licensees used the same implementation guidance to comply with the Mitigation Strategy License Condition as they used to comply with § 50.54(hh)(2); consequently, compliance with § 50.54(hh)(2) is sufficient to comply with the Mitigation Strategy License Condition. Subsequently, the NRC rescinded Order EA–02–026, section B.5.b by letter dated November 28, 2011, based on the fact that the regulations encompassed the order requirements. Because licensees comply with both the regulations and Mitigation Strategy License Condition via the same guidance, such that the former § 50.54(hh)(2) requirements encompass the license condition

requirements, the NRC proposes concluding that § 50.155(b)(3) fully replaces the requirements that exist in the Mitigation Strategy License Condition and deeming that the Mitigation Strategy License Conditions imposed in 2007 are removed from the licenses for those licensees that received that license condition.

As discussed in section I.C., “Cyber Security,” of this document, the NRC imposed a license condition referencing the approved CSP in each 10 CFR part 50 license in the course of review and approval of the CSP. This proposed rule would remove that license condition once sufficient time has passed since the permanent removal of fuel from the reactor vessel.

Because this proposed rule would remove certain license conditions without actually amending the associated licenses, the NRC would issue by letter an administrative license amendment to each applicable licensee that would remove the relevant license condition(s) from that licensee’s license and include revised license pages.

P. Changes for Consistent Treatment of Holders of Combined Licenses and Operating Licenses

The NRC proposes to revise § 50.36(c)(6), § 50.44(b), § 50.46(a)(1)(i), § 50.48(f), § 50.54(y), § 50.60(a), § 50.61(b)(1), § 50.62(a), § 50.71(e)(4), and 10 CFR part 50, Appendix I, Section IV.C., to provide consistent treatment for COL (Part 52) and operating license (Part 50) holders. These changes have the purpose of aligning regulatory applicabilities for COL holders upon submittal of the § 52.110(a) certifications with regulatory applicabilities for operating license holders upon submittal of the § 50.82(a)(1) certifications. In each section listed, the NRC would insert “or § 52.110(a)” following each instance of “§ 50.82(a)(1).”

The NRC proposes to revise incorrect references to § 52.110 in § 50.49(a), § 50.54(o), § 50.65(a)(1), and § 52.110(e) by replacing “§ 52.110(a)(1)” with “§ 52.110(a).” The NRC proposes to insert a reference to § 52.110 following an existing reference to § 50.82 in § 50.54(w)(4)(ii), § 50.54(w)(4)(iii), § 50.75(e)(1)(ii)(B), § 50.75(e)(1)(v), § 50.75(h)(1)(iv), and § 50.75(h)(2). The NRC proposes to remove the words “under this part” from § 50.54(w) introductory text because paragraph (w) is also applicable to holders of combined licenses issued under 10 CFR part 52 as stated in the introductory text for § 50.54. Finally, the NRC proposes to revise an incorrect reference in

§ 50.59(b) by replacing “§ 50.110” with “§ 52.110(a).”

V. Specific Requests for Comments

The NRC is seeking public comments on this proposed rule. The agency is particularly interested in comments and supporting rationale from the public on the following:

- *PSDAR Approval:* The current decommissioning regulations establish that once a licensee permanently ceases operation of the nuclear power reactor, it cannot undertake any major decommissioning activities until it provides the public and the NRC with additional information. The NRC requires that the licensee submit this information in the form of a PSDAR, which consists of the licensee’s proposed decommissioning activities and schedule through license termination, a discussion of the reasons for concluding that the proposed activities will be bounded by existing analyses of environmental impacts, and a site-specific cost estimate for the proposed activities. The PSDAR is made available to the public for comment and is subject to NRC review (but not approval). Additionally, the current decommissioning regulations prohibit, at any time, the performance of any decommissioning activity that may result in significant environmental impacts not previously reviewed. Under this regulatory framework, licensees are not required to have an NRC-approved decommissioning plan; instead, 90 days after the NRC has received the licensee’s PSDAR, licensees may perform, under 10 CFR 50.59, those major decommissioning activities that are bounded by existing environmental analyses. Therefore, no site-specific NEPA review is required and there is no hearing opportunity under 10 CFR part 2 before these decommissioning activities begin. To perform decommissioning activities that are not bounded by existing environmental analyses, however, a licensee would have to submit a request for a license amendment or an exemption request, which would trigger a site-specific NEPA review and hearing opportunity under 10 CFR part 2. Additionally, at least two years before termination of the license, the licensee must submit an application for termination of license and a license termination plan, which must be approved by the NRC. The requirement to approve the license termination plan also triggers a site-specific NEPA review and hearing opportunity under 10 CFR part 2.

As part of the development of the proposed rule, the NRC staff evaluated whether the NRC should explicitly

approve each licensee’s PSDAR before allowing major decommissioning activities to begin. The staff concluded that based on lessons learned and experience, there is currently no indication that requiring approval of a PSDAR has any substantial impact on the public health and safety. However, the NRC is gathering additional feedback from the public.

As part of this rulemaking, should the NRC require approval of the PSDAR, a site-specific environmental review, and hearing opportunity before a licensee undertakes any decommissioning activity? Other than NRC review and approval of the PSDAR, are there other activities that could help to increase transparency and public trust in the NRC regulatory framework for decommissioning? Should the rule provide a role for the states or local governments in the process? What should that role be? What are the advantages or disadvantages of various roles? Please provide an explanation for your response.

- *Timeframe for Decommissioning:* For nuclear power reactor licensees, 10 CFR 50.82(a)(3) and 10 CFR 52.110(c) state that decommissioning must be completed within 60 years of permanent cessation of operations. In this proposed rule, the NRC is not proposing changes to the decommissioning timeframe requirements.

What are the advantages and disadvantages of requiring prompt decontamination rather than allowing up to 60 years to decommission a site? As part of its review of a PSDAR, what are the advantages and disadvantages of NRC evaluating and making a decision about the timeframe for decommissioning on a site-specific basis?

- *Emergency Planning:* As discussed in the “*Technical Basis for the Graded Approach*” and “*Emergency Preparedness*” sections of this document, although the spectrum of credible accidents and operational events requiring an emergency response is reduced at a decommissioning nuclear power reactor as compared to that for an operating nuclear power reactor, reliable emergency preparedness functions are still required to ensure public health and safety in the event of a zirconium fire scenario.

The NRC has concluded that dry cask storage and spent fuel pools are both very safe. What are the advantages and disadvantages of requiring dedicated radiological emergency planning, including a 10-mile EPZ, until all spent nuclear fuel at a site is removed from the spent fuel pool and placed in dry cask storage? Is there additional

information the NRC should consider in evaluating whether all-hazards planning would be as effective as dedicated radiological emergency planning?

The NRC has determined that 10 hours would be a sufficient amount of time for an emergency response to a spent fuel pool accident based on an all-hazards plan. Is there additional information the NRC should consider in evaluating this issue?

- *Emergency Response Data Systems:* Nuclear power facilities that are shutdown permanently or indefinitely are currently not required to maintain ERDS. These systems transmit near-real-time electronic data between the licensee’s onsite computer system and the NRC Operation Center. Licensees in Level 1 would maintain a capability to provide meteorological, radiological, and spent fuel pool data to the NRC within a reasonable timeframe following an event. What are the advantages and disadvantages of requiring nuclear power plant licensees to maintain those aspects of ERDS until all spent fuel is removed from the pool?

- *Cyber Security:* The proposed rule applies cyber security requirements to Level 1 plants. However, a licensee in Level 2 would not be required to maintain a cyber security plan because the NRC has determined that there is little chance that the spent fuel in the SFP could heat up to clad ignition temperature within 10 hours. What are the advantages and disadvantages of extending cyber security requirements to shutdown nuclear power plants until all spent fuel is transferred to dry cask storage?

- *Insurance:* The proposed rule would allow nuclear power reactor licensees in decommissioning to reduce the offsite liability and onsite property insurance amounts that they are required to maintain once a plant enters Level 2. The transition to Level 2 financial protection amounts would be optional for licensees and they would have to submit an analysis that demonstrates a reduced risk of a zirconium fuel cladding fire in the SFP. What are the advantages and disadvantages of requiring the existing level of insurance to be maintained until all spent fuel is in dry cask storage (Level 3)?

- *Financial Assurance:* Pursuant to § 50.75, “Reporting and recordkeeping for decommissioning planning,” specifically paragraph (b)(1), nuclear power reactor licensees and applicants must certify that reasonable assurance for radiological decommissioning funding has been (for licensees) or will be (for applicants) provided in an amount that may be more, but not less,

than the generic amount provided by the Commission's regulations (*i.e.*, the table of minimum amounts under § 50.75(c)). Alternatively, under § 50.75(b)(4), the certified amount of funding may be based on a site-specific cost estimate for decommissioning the facility.

The current table of minimum amounts (also referred to as the minimum decommissioning formula) has not been updated for over 30 years. The NRC is considering updates to the generic decommissioning funding formula to make it more reflective of current cost considerations.

What are the advantages and disadvantages of updating the formula to reflect recent data and to cover all estimated radiological decommissioning costs rather than the bulk of the costs?

- *Site-Specific Cost Analysis:*

Currently, licensees can use either the generic amount under 10 CFR 50.75(c) or a site-specific cost estimate under 10 CFR 50.75(b)(4) to determine the certified amount of radiological decommissioning funding. As provided in 10 CFR 50.82(a)(8)(ii) and 10 CFR 52.110(h)(2), a licensee may withdraw funds from the decommissioning trust fund up to a cumulative total of 3 percent of the generic amount calculated under 10 CFR 50.75(c) for decommissioning planning purposes at any time without prior notification to the NRC. After submittal of the certifications of permanent shutdown and fuel removal required under 10 CFR 50.82(a)(1) and 10 CFR 52.110(a) and commencing 90 days after the NRC has received the PSDAR, the licensee may use up to an additional 20 percent of the decommissioning funds prescribed in 10 CFR 50.75(c) for decommissioning purposes. The licensee is prohibited from using the remaining 77 percent of the generic decommissioning funds until a site-specific decommissioning cost estimate is submitted to the NRC. Requirements in 10 CFR 50.82(a)(8)(iii) and 10 CFR 52.110(h)(3) establish that a licensee shall provide a site-specific decommissioning cost estimate within 2 years following permanent cessation of operations. If the estimate of costs provided with the PSDAR is a site-specific cost estimate, this requirement can be satisfied with the PSDAR submittal.

What are the advantages and disadvantages of requiring a full site investigation and characterization at the time of shutdown? What are the advantages and disadvantages of eliminating the formula and requiring a site-specific cost estimate during operations?

- *Decommissioning Trust Fund:* Under the NRC's existing regulations and this proposed rule, the amounts set aside for radiological decommissioning should not be used for the maintenance and storage of spent fuel in the spent fuel pool, or for the design or construction of spent fuel dry storage facilities, or for other activities not directly related to the long-term storage, radiological decontamination or dismantlement of the facility, or decontamination of the site.

Should the NRC's regulations allow decommissioning trust fund assets to be used for spent fuel management if (1) there is a projected surplus in the fund based on a comparison to the expected costs identified in a site-specific cost estimate and (2) the assets are returned to the fund within an established period of time? What are the advantages and disadvantages of allowing decommissioning trust fund assets to be used for those purposes? What are the advantages and disadvantages of allowing decommissioning trust fund assets to be used for non-radiological site restoration prior to the completion of radiological decommissioning?

- *Timing of Decommissioning Funding Assurance Reporting:* This proposed rule would change the timing of the decommissioning funding assurance reporting requirements in § 50.75(f)(1) to coordinate them with the ISFSI decommissioning reporting requirements in § 72.30. Under this proposed rule, operating reactors would be permitted to submit decommissioning funding status reports triennially instead of biennially.

What are the advantages and disadvantages to extending the reporting frequency from two years to three years? Does this change affect the risk of insufficient decommissioning funding? Please provide an explanation for your response.

- *Backfit Rule:* For nuclear power reactor licensees, the NRC's backfitting provisions are located in § 50.109, "Backfitting," and the issue finality provisions are in 10CFRpart52 (the "Backfit Rule"). The language of the Backfit Rule clearly applies to a licensee designing, constructing, or operating a nuclear power facility. For example, § 50.109(a)(1) defines "backfitting" to mean changes to, among other things, the procedures or organization required to design, construct, or operate a facility.

This proposed rule states that the Backfit Rule applies to decommissioning nuclear power plants. What are the advantages and disadvantages of applying the Backfit

Rule to decommissioning nuclear power plants?

- *Exemptions:* As stated in this proposed rule, one of the goals of amending these regulations is to reduce the need for regulatory exemptions. 10 CFR 50.12 states that the Commission may grant exemptions from the requirements of the regulations in 10 CFR part 50 if the request will not present an undue risk to the public health and safety, and is consistent with the common defense and security. What are the advantages and disadvantages of the current 10 CFR 50.12 approach to decommissioning-related exemptions? What standard should the NRC apply in determining whether to grant exemptions from the new or amended regulations? What are the advantages and disadvantages of providing an opportunity for the public to weigh in on such exemption requests? Are there other process changes the NRC should consider in determining whether to grant exemptions from the new or amended regulations?

- *Applicability:* Section III of this document provides a discussion of the applicability of this proposed rule. Specifically, there is a discussion for the applicability to NRC licensees during operations and to ISFSI-Only and Standalone ISFSI/Decommissioned Reactor Sites. Permanently shutdown nuclear power plants will be at different stages of decommissioning when the new decommissioning regulations become effective and will have previously received varying regulatory exemptions.

Can you foresee any implementation issues with the proposed rule as it is currently written? For any new or amended requirement included in this proposed rule, how should the requirement apply to sites currently in different stages of decommissioning?

- *Insurance for Specific License ISFSI:* A 10 CFR part 50 or 10 CFR part 52 nuclear power reactor licensee with a 10 CFR part 72 general license ISFSI at the reactor site is subject to the financial protection requirements under 10 CFR part 140, whereas a specific license ISFSI under 10 CFR part 72 is not. In SECY-04-0176, "Exemption Requests to Reduce Liability Insurance Coverage for Decommissioning Reactors after Transfer of all Spent Fuel from a Spent Fuel Pool to Dry Cask Storage," dated September 29, 2004 (ADAMS Accession No. ML040850518), the NRC staff noted that general license ISFSIs subject to the requirements under 10 CFR part 72 were also subject to the requirements of a 10 CFR part 50 license and by virtue of this license, they are required to maintain some level of

liability insurance under section 170, "Indemnification and Limitation of Liability," of the AEA (known as the Price-Anderson Act) and the NRC's implementing regulations at 10 CFR part 140. Further, the NRC staff acknowledged that there was little technical difference between a general license ISFSI and a specific license ISFSI.

The NRC recognizes that as a reactor site is decommissioned, eventually all that remains of the 10 CFR part 50 or part 52 licensed site is a general license ISFSI under 10 CFR part 72, which is essentially the same as a specific license ISFSI under 10 CFR part 72.

Considering that 10 CFR part 72 specific license ISFSIs have no financial protection requirements, should the NRC address the disparity between specific license and general license ISFSIs as a part of this rulemaking? Please provide an explanation for your response.

- *Recordkeeping Requirements for Facilities Licensed under 10 CFR part 52:* The current appendices in 10 CFR part 52 contain section X, "Records and Reporting," for all of the certified designs codified in 10 CFR part 52. Section X requires, in part, that all departures from the certified design be recorded and those records kept throughout the term of the license. However, as part of this rulemaking, the NRC is proposing to change the record retention requirements for nuclear power reactors in the decommissioning process such that they no longer need to retain certain records associated with SSCs that are no longer in service or necessary to keep the plant in a safe condition. The NRC is considering making conforming changes to section X of the applicable appendices to 10 CFR part 52 to allow this change to apply to records of departures from the certified design as well as the associated SSCs. Given the already existing change control procedures in the appendices to 10 CFR part 52, as well as the significant changes in recordkeeping technology since the NRC's record retention requirements were introduced (*i.e.*, digital media instead of paper copies), should additional changes be made to the 10 CFR part 52 appendices as a part of this rulemaking, and would such changes be beneficial to 10 CFR part 52 licensees or add efficiency to the decommissioning process for these facilities? Please provide an explanation for your response.

- *Identical Requirements under § 50.82 and § 52.110:* As part of this rulemaking, the NRC proposes to revise § 52.110 to make the same changes proposed in § 50.82 for the reasons

previously discussed and for consistency. The NRC also proposes to add paragraphs (h)(5) through (h)(7) to § 52.110 with site-specific decommissioning cost estimate reporting requirements that are identical to the requirements in § 50.82(a)(8)(v) through (vii). Given that the decommissioning financial assurance requirements in § 52.110 are identical to the requirements in § 50.82, should the NRC consider removing the specific requirements from § 52.110(f)–(h) and instead add a reference in § 52.110 to the identical regulations in § 50.82(a)(6)–(8)? Are there any other provisions in § 52.110 that the NRC should consider removing and replacing with a reference to an identical requirement in § 50.82 (*e.g.*, the decommissioning requirements under § 52.110(c)–(e))? Please provide an explanation for your response.

- *Removal of License Conditions and Withdrawal of Orders:* This rulemaking seeks to improve regulatory efficiency by removing license conditions and withdrawing an order for which substantively identical requirements have been imposed by rulemaking. This would avoid the future administrative expenditures by licensees and the NRC to accomplish the removal of these requirements on a license-specific basis through a generic regulatory action either upon the effective date of the final rule or when conditions permit the removal during the decommissioning process. The NRC has identified certain orders that were issued following the terrorist events of September 11, 2001, license conditions regarding these orders, and license conditions regarding cyber security implementation as having substantively identical requirements made generically applicable through rulemaking. Because these license-specific requirements are duplicative with other generic requirements, the NRC concludes there would be no reduction in safety. Please provide any comments you may have on rescinding Order EA–06–137 and the related license conditions. As part of this rulemaking, are there other license-specific requirements in license conditions or orders that have substantively identical generic requirements that should be addressed in this rulemaking? Please provide an explanation for your response.

- *Spent Fuel Management Planning:* Section IV.K of this document discusses spent fuel management planning in the § 50.54(bb) regulation. The § 50.54(bb) current rule language requires NRC preliminary approval and final review, as part of any proceeding for continued licensing under part 50 or part 72, of the

IFMP. The discussion in Section IV.K points out that the proceedings for continued licensing under part 50 or part 72 no longer exist. Therefore, the proposed rule includes language intended to clarify the current IFMP approval process by requiring submittal of the IFMP for NRC review and approval by license amendment. What, if any, challenges do you foresee with implementing this part of the proposed rule? Please provide an explanation for your response.

The § 50.54(bb) current rule language requires licensees to notify the NRC of any significant changes to the IFMP. As discussed in section IV.K, the NRC proposes to revise this requirement to require licensees to submit to the NRC any changes to the IFMP as an application for an amendment to its license. The NRC is also considering replacing the notification requirement with a change control provision to specify what changes a licensee can make to the IFMP without NRC approval. Examples of change control provisions in the current NRC regulations include § 50.54(a) for quality assurance programs and § 50.54(q) for emergency plans. If the NRC includes a similar change control provision in § 50.54(bb), what should the safety and environmental criteria be for determining whether a licensee could make a change to its IFMP without seeking NRC approval? For example, the NRC could permit changes that are not considered to be reductions in the commitments, including (1) changes to the planned actions for managing spent fuel that result in an addition of one or more SSCs that the licensee relies on for irradiated fuel management, and (2) changes to the projected cost or funding for managing irradiated fuel that is already included in the report required by 10 CFR 50.82(a)(8)(vii) or 10 CFR 52.110(h)(7). Should the NRC also include recordkeeping and reporting provisions for a licensee to retain a record of each change to the IFMP made without prior NRC approval and submit a report to the NRC of those changes? If so, what should be the timeframe for the records to be retained and the timeframe for reporting to the NRC after the change is made, taking into consideration the estimated frequency of performing IFMP changes? Please provide an explanation for your response.

VI. Section-by-Section Analysis

The following paragraphs describe the specific changes proposed by this rulemaking.

Appendix G to 10 CFR Part 20, Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifests

In section III, paragraph E.1., this proposed rule would remove the word “or” and add in its place the word “of” and it would also remove the phrase “20 days”, and add in its place the phrase “45 days”.

Section 26.3 Scope

In § 26.3, this proposed rule would revise paragraph (a) by subdividing it into two subparagraphs, (a)(1) and (2), to include the NRC’s docketing of a license holder’s certifications required under §§ 50.82 and 52.110(a).

Section 26.825 Criminal Penalties

In § 26.825, this proposed rule would revise paragraph (b) to remove the number “26.3” from the list of regulations in 10 CFR part 26 that are excluded from § 26.825(a).

Section 50.1 Basis, Purpose, and Procedures Applicable

In § 50.1, this proposed rule would add language clarifying that the regulations in 10 CFR part 50 provide for the licensing of production and utilization facilities through the termination of the associated 10 CFR part 50 licenses.

Section 50.2 Definitions

In § 50.2, this proposed rule would retain the existing definition of *certified fuel handler* and add an alternative definition for the purposes explained elsewhere in this document. This proposed rule also would add a definition for a *non-power production or utilization facility*.

Section 50.36 Technical Specifications

In § 50.36, this proposed rule would revise paragraph (c)(6) to insert “or § 52.110(a)” following “§ 50.82(a)(1).”

Section 50.38 Ineligibility of Certain Applicants

This proposed rule would revise § 50.38 by including the current text as paragraph (a) and by adding paragraph (b) to state that the prohibition in paragraph (a) of this section does not apply to a person, corporation, or other entity seeking a license for a facility that is not a production or utilization facility.

Section 50.44 Combustible Gas Control for Nuclear Power Reactors

In § 50.44, this proposed rule would revise paragraph (b) to insert “or § 52.110(a)” following “§ 50.82(a)(1).”

Section 50.46 Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Plants

In § 50.46, this proposed rule would revise paragraph (a)(1)(i) to insert “or § 52.110(a)” following “§ 50.82(a)(1).”

Section 50.47 Emergency Plans

This proposed rule would make conforming changes to paragraph (b) in § 50.47 and would add paragraph (f) denoting when the planning standards for offsite emergency plans in paragraph (b) of this section do not apply.

Section 50.48 Fire Protection

In § 50.48, this proposed rule would revise paragraph (f) to insert “or § 52.110(a)” following “§ 50.82(a)(1).”

Section 50.49 Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants

In § 50.49, this proposed rule would revise paragraph (a) by replacing “§ 52.110(a)(1)” with “§ 52.110(a).”

Section 50.51 Continuation of License

In § 50.51, this proposed rule would remove the phrase, “to authorize ownership and possession of the production or utilization facility,” for reasons discussed elsewhere in this document.

Section 50.54 Conditions of Licenses

In § 50.54, this proposed rule would revise footnote 2 to the table in paragraph (m)(2)(i) to indicate when a Shift Technical Advisor is not required. Paragraph (o) would be revised by replacing “52.110(a)(1)” with “52.110(a).” The NRC also would revise § 50.54(p) to include the definitions for *change* and *decrease in safeguards effectiveness* for use in paragraph (p), would revise and redesignate existing paragraphs (p)(1) and (2) as (p)(2) and (3), would redesignate paragraphs (p)(3) and (4) as paragraphs (p)(5) and (6), and would add new paragraphs (p)(1) and (4). A portion of the existing text in paragraphs (p)(1) and (2) would be used to create new paragraph (p)(4).

This proposed rule would revise: Paragraph (q)(1) to clarify that the definitions are for use in paragraph (q), paragraph (q)(1)(iii) to remove the reference to appendix E to 10 CFR part 50, paragraph (q)(2) to add clarification to the applicability, paragraph (q)(3) to add applicable emergency planning requirements, paragraphs (q)(4) and (5) to remove the phrase “after February 21, 2012,” and add new paragraphs (q)(7) and (8) to add the requirements for licensees after the NRC docket their certifications required for

decommissioning under § 50.82(a)(1) or § 52.110(a).

Paragraph (s)(2)(ii) would be revised by removing the phrase “after April 1, 1981,” and paragraph (s)(3) would be revised by adding clarification at the beginning of the sentence that if the standards apply to offsite radiological response plans then the NRC will base its findings on a review of FEMA findings and determinations.

Paragraph (t) would be revised by replacing “.” with “or” in the second sentence of paragraph (t)(1)(ii), adding new subparagraph (t)(1)(iii) to clarify the interval at which the licensee’s emergency preparedness plan must be reviewed after the NRC has docketed the certifications required for decommissioning, and by adding new paragraph (t)(3) to state that the review requirement is no longer required once all fuel is in dry cask storage.

Paragraph (w) would be revised by removing the words “under this part” from the introductory text, adding a reference to § 52.110 in paragraphs (w)(4)(ii) and (w)(4)(iii), and adding new paragraphs (w)(5) and (6) to include the financial protection requirements for production or utilization facilities undergoing decommissioning.

Paragraph (y) would be revised to insert “or § 52.110(a)” following “§ 50.82(a)(1).”

Paragraph (bb) would be revised by restructuring the paragraph and revising the requirements of an irradiated fuel management plan.

Section 50.59 Changes, Tests, and Experiments

In § 50.59, this proposed rule would revise paragraph (b) to correct a reference to § 52.110(a). It would also revise paragraph (d)(3) to include the exception for when the records of changes requirement in paragraph (d)(3) applies.

Section 50.60 Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation

In § 50.60, this proposed rule would revise paragraph (a) to insert “or § 52.110(a)” following “§ 50.82(a)(1).”

Section 50.61 Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events

In § 50.61, this proposed rule would revise paragraph (b)(1) to insert “or § 52.110(a)” following “§ 50.82(a)(1).”

Section 50.62 Requirements for Reduction of Risk From Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants

In § 50.62, this proposed rule would revise paragraph (a) to insert “or § 52.110(a)” following “§ 50.82(a)(1).”

Section 50.65 Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants

In § 50.65, this proposed rule would revise paragraph (a)(1) by replacing “§ 52.110(a)(1)” with “§ 52.110(a).”

Section 50.71 Maintenance of Records, Making of Reports

In § 50.71, this proposed rule would revise paragraph (c) by including the current text as paragraph (c)(1) and it would add new paragraph (c)(2) to add records requirements for licensees for whom the NRC has docketed the certifications required for decommissioning.

Paragraph (e)(4) would be revised to insert “or § 52.110(a)” following “§ 50.82(a)(1).”

Section 50.75 Reporting and Recordkeeping for Decommissioning Planning

In § 50.75, this proposed rule would revise paragraph (a) by clarifying the availability of funds to decommission a facility as defined in § 50.2.

Paragraph (b)(1) would be revised by replacing “financial” with “reasonable” assurance and other conforming changes; paragraph (b)(3) would be revised by removing the phrase “as acceptable to the NRC” from the end of the paragraph; paragraph (b)(4) would be revised to include a site-specific decommissioning cost estimate and the second sentence of current paragraph (b)(4) would be moved to become a new paragraph (b)(5).

Paragraph (e)(1) would be revised to include the term “reasonable assurance of funds to decommission,” and paragraphs (e)(1)(i) and (ii) would be revised to include the description of “decommissioning cost” before the word estimate throughout each paragraph. Paragraphs (e)(1)(ii)(B) and (e)(1)(v) would be revised to add a reference to § 52.110.

Paragraph (f) would be amended by revising (f)(1) to include the requirement for a report to include information regarding any potential decommissioning shortfall, it would be further amended by removing paragraph (f)(2) and redesignating (f)(3) through (5) as (f)(2) through (4) with minor revisions.

Paragraphs (h)(1)(iii) and (iv) and (h)(2) would be revised to remove the reference to three office directors within the NRC for the submission of written notice of the intention to make a payment or disbursement of funds and replace it with the Document Control Desk. Paragraphs (h)(1)(iv) and (h)(2) would be revised to add a reference to § 52.110.

Section 50.82 Termination of License

In § 50.82, this proposed rule would revise paragraph (a)(2) to provide clarification as to when a licensed nuclear power reactor is no longer considered to be a utilization facility. It also would revise paragraph (a)(4)(i) to clarify that licensees provide the basis for whether the environmental impacts from site-specific decommissioning activities are bounded by federally issued environmental review documents. The phrase “including the projected cost of managing irradiated fuel” would be removed at the end of the last sentence. Paragraph (a)(4)(ii) would be revised to include the requirement for the NRC to include the irradiated fuel management plan in the notice of the receipt of the PSDAR in the **Federal Register** and to allow the public to comment.

Paragraph (a)(6)(ii) would be revised to provide clarification.

Paragraph (a)(8)(i)(A) would be revised to remove the words “legitimate decommissioning” and to replace the word “decommissioning” with “decommission.” Paragraph (a)(8)(ii) would be revised to clarify paragraph (c) to § 50.75 is where the specified amount is located.

Paragraph (a)(8)(v) would be revised to spell out the acronym DCE, decommissioning cost estimate, and to include the ability for the licensee to combine the reporting requirements of 10 CFR part 72, § 50.82(a)(8)(v), and § 50.82(a)(8)(vii).

Paragraph (a)(8)(vii) would be revised to spell out the acronym DCE, decommissioning cost estimate.

Paragraph (a)(9) would be revised to clarify that all nuclear power reactors that have loaded fuel into the reactor must submit an application for termination of a license and paragraph (a)(9)(ii)(F) would be revised to include the requirement to identify funding sources for license termination, spent fuel management, and ISFSI decommissioning.

The introductory text of paragraph (b) would be revised to replace the term “non-power reactor licensees” with “non-power production or utilization facilities and fuel reprocessing plants.”

Paragraph (b)(6) would be redesignated as (b)(8) and new paragraphs (b)(6) and (7) would be added to include the criteria for when a non-power production or utilization facility or fuel reprocessing plant licensed under 10 CFR part 50 is no longer considered a production or utilization facility.

Section 50.109 Backfitting

This proposed rule would revise § 50.109 in its entirety to provide backfitting provisions for reactors both before and during decommissioning and to require that a documented evaluation for a modification necessary to bring a facility into compliance with a license or the rules or orders of the Commission, or into conformance with the licensee’s written commitments, must include a consideration of the costs of imposing the modification.

Section 50.155 Mitigation of Beyond-Design-Basis Events

This proposed rule would add new paragraphs (h)(6), (h)(7) and (h)(8) that would deem removed certain license conditions and withdraw certain orders made redundant by regulations imposing substantively identical requirements.

Section 50.200 Power Reactor Decommissioning Emergency Plans

This proposed rule would add new § 50.200 that would contain alternate emergency preparedness requirements for nuclear power reactor facilities in decommissioning.

Appendix E to 10 CFR Part 50, Emergency Planning and Preparedness for Production and Utilization Facilities

This proposed rule would revise section I. Introduction of appendix E to 10 CFR part 50 by removing paragraph 6.

Section IV. Content of Emergency Plans of appendix E to 10 CFR part 50 would be revised by removing from paragraph 4 the phrases “of the later of the date” and “or December 23, 2011,” from the first sentence; new paragraph 8 would be added to inform licensees that the requirements of paragraphs 4, 5, and 6 of this section are no longer required once the NRC docketed the licensee’s certifications required for decommissioning; paragraphs A.7., A.9., B.1., C.2., E.8.c., and I. would all be revised by removing the “by date” phrases; paragraph D.4. would be removed; the last sentence of paragraph E.8.d. would be removed; in paragraph F.2.d., the end of the 3rd sentence beginning with the word “and” would be removed; paragraph F.2.j(v) would be

removed and reserved; and new paragraph F.2.k would be added to require licensees to follow the biennial exercise requirements in paragraph F.2 of appendix E to 10 CFR part 50 after the NRC docket the certifications required for decommissioning.

This proposed rule would revise section VI. Emergency Response Data System of appendix E to 10 CFR part 50 by removing the date in paragraph 4.a. and the date in paragraph 4.d., also in paragraph 4.d. it would remove the phrase “, whichever comes later” from the first sentence.

Appendix I to 10 CFR Part 50, Numerical Guides for Design Objectives and Limiting Conditions for Operation To Meet the Criterion “As Low as Is Reasonably Achievable” for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents

This proposed rule would revise section IV.C of appendix I to 10 CFR part 50 by inserting “or § 52.110(a)” following “§ 50.82(a)(1).”

Section 51.53 Postconstruction Environmental Reports

This proposed rule would revise the first sentence in paragraph (d) to include applicants for a license amendment approving an irradiated fuel management plan under § 50.54(bb). The proposed rule would also add references to § 50.82 and § 52.110 after “license termination plan.”

Section 51.95 Postconstruction Environmental Impact Statements

This proposed rule would revise the first sentence in paragraph (d) to refer to an amendment approving an irradiated fuel management plan under § 50.54(bb), the license termination plan under § 50.82 or § 52.110, or a decommissioning plan under § 50.82.

Section 52.0 Scope

In § 52.0, this proposed rule would add language clarifying that the regulations in 10 CFR part 52 remain effective through the termination of the associated 10 CFR part 52 licenses.

Section 52.63 Finality of Standard Design Certifications

This proposed rule would revise paragraph (b)(2) by removing the last sentence and by adding new paragraphs (b)(2)(i) and (ii) regarding the recordkeeping and retention requirements for departures from the design of a facility.

Section 52.109 Continuation of Combined License

In § 52.109, this proposed rule would remove the phrase, “to authorize ownership and possession of the production or utilization facility,” for reasons discussed elsewhere in this document.

Section 52.110 Termination of License

This proposed rule would revise paragraph (b) as paragraph (b)(1) and would add paragraph (b)(2) to provide clarification as to when a facility licensed under 10 CFR part 52 is no longer considered to be a production or utilization facility. Paragraph (d)(1) would be revised to clarify that licensees provide the basis for whether the environmental impacts from site-specific decommissioning activities are bounded by federally issued environmental review documents, and the phrase “site-specific decommissioning cost estimate” would be added at the end of the last sentence. Paragraph (d)(2) would be revised to include the requirement for the NRC to include the irradiated fuel management plan in the notice of the receipt of the PSDAR in the **Federal Register** and to allow the public to comment.

Paragraph (e) would be revised by replacing “§ 52.110(a)(1)” with “§ 52.110(a).”

Paragraph (f)(2) would be revised to clarify the decommissioning activities licensees shall not perform. Paragraph (h)(1)(i) would be revised to remove the phrase “legitimate decommissioning,” paragraph (h)(2) would be revised to include a more specific regulatory reference, and paragraphs (h)(5) through (8) would be added with requirements for the submission of financial status reports. Paragraph (i) would be revised to clarify that all nuclear power reactor licensees that have loaded fuel into the reactor must submit an application for termination of a license. Paragraph (i)(2)(vi) would be revised to include identification of sources of funds for license termination, spent fuel management, and ISFSI decommissioning, as applicable.

Section 72.13 Applicability

This proposed rule would revise § 72.13 by adding a new paragraph (e) to incorporate conforming changes to match technical changes elsewhere in the rule.

Section 72.30 Financial Assurance and Recordkeeping for Decommissioning

This proposed rule would revise § 72.30 by removing the second sentence in paragraph (c). The proposed

revisions would create new paragraphs (b)(1) through(3) and redesignate the existing paragraphs (b)(1) through(6) as new (b)(3)(i) through(vi).

Section 72.32 Emergency Plan

In § 72.32, this proposed rule would clarify that the requirement for having an emergency plan applies when the proposed ISFSI would not be located on the site or within the exclusion area of a nuclear power reactor licensed under 10 CFR parts 50 or 52. The proposed revisions would consolidate the current language and remove redundancies by using standardized language consistent with other proposed rule provisions.

Section 72.44 License Conditions

This proposed rule would revise § 72.44 by adding a sentence to paragraph (f) to indicate that licensees need not comply with the requirements of paragraph (f) once all spent fuel has been removed from the site.

Section 72.62 Backfitting

This proposed rule would revise paragraph (a)(2) to clarify that the backfitting provisions under this part continue to apply during decommissioning.

Section 72.72 Material Balance, Inventory, and Records Requirements for Stored Material

This proposed rule would revise paragraph (d) by breaking it into three paragraphs. The last sentence of the current paragraph (d) would become paragraph (d)(3). New text is proposed for paragraph (d)(2) and minor revisions are proposed for paragraph (d)(1).

Section 72.212 Conditions of General License Issued Under § 72.210

This proposed rule would revise § 72.212 by adding new paragraphs (b)(9)(vii)(A) and (B) regarding the protection of spent fuel after the NRC docket the decommissioning certifications. Paragraph (b)(9)(vii)(A) would allow a licensee to voluntarily provide for physical protection of the spent fuel under Subpart H of this part and § 73.51 of this chapter. Paragraph (b)(9)(vii)(B) would require a licensee who elects to provide physical protection under Subpart H of this part and § 73.51 of this chapter to notify the NRC of this decision using the provisions of § 50.54(p)(2).

Section 72.218 Termination of License

This proposed rule would revise § 72.218 by revising paragraphs (a) and (b) and removing paragraph (c). Paragraph (a) is revised to reference the decommissioning requirements in

§ 50.82 or § 52.110 that apply to the general license and paragraph (b) is revised to state when the general license is considered terminated.

Section 73.51 Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste

This proposed rule would revise § 73.51 by removing text from paragraph (a), (a)(1), (a)(2), and adding new paragraph (a)(3). Paragraph (a)(3) would be added to require notification to the NRC under the provisions of § 72.212(b)(9)(vii) of this chapter by a licensee who elects to provide physical protection under Subpart H of 10 CFR part 72.

Section 73.54 Protection of Digital Computer and Communications Systems and Networks

This proposed rule would revise § 73.54 by removing the introductory text of the section and revising the introductory text of paragraphs (a), (b), and (c), and adding new paragraphs (i), and (j). The introductory text of paragraph (a) would be revised to capture that the rule applies during operation and decommissioning. Minor edits would be made to paragraphs (b) and (c). Paragraph (i) states that the requirements of § 73.54 no longer apply once the criteria in (i)(1) and (2) are met. Paragraph (j) provides for the removal of the cyber security license condition.

Section 73.55 Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage

This proposed rule would revise § 73.55 by clarifying in paragraph (b)(3) that a licensee's physical protection program must be designed to prevent significant core damage until the NRC docket the certifications required for decommissioning.

New paragraphs (b)(9)(ii)(B)(1), (2), (2)(i), and (2)(ii) would be added to provide additional clarification for licensees implementing fitness for duty programs.

Paragraph (c)(6) would be revised by replacing the text beginning with the words "that describes" through the end of the sentence with the phrase, "in accordance with the requirements of § 73.54 of this part."

Paragraph (e)(9)(v)(A) would be revised to provide clarification for when the reactor control room would not be considered a vital area.

Paragraph (j)(4)(ii) would be revised to include a system for communication with certified fuel handlers if the NRC

had docketed the certifications required for decommissioning.

Paragraph (p)(1)(i) and (ii) would be revised to allow a certified fuel handler or a licensed senior operator to approve the suspension of security measures if the NRC has docketed the certifications required for decommissioning.

Section 140.11 Amounts of Financial Protection Required for Certain Reactors

This proposed rule would revise § 140.11 by adding new paragraphs (a)(5), (a)(5)(i) and (ii) and by redesignating paragraph (b) as paragraph (c) and adding new paragraph (b) that would provide the requirements for the amounts of financial protection required for reactors in decommissioning.

Section 140.81 Scope and Purpose

This proposed rule would revise § 140.81 by clarifying the scope of who is subject to the requirements in this section and to further clarify that this section no longer applies once a licensee meets the requirements of § 140.11(a)(5)(i) and (ii).

VII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear production and utilization facilities. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

VIII. Regulatory Analysis

The NRC has prepared a draft regulatory analysis for this proposed rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The draft regulatory analysis is available as indicated in the "Availability of Documents" section of this document. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** section of this document.

IX. Backfitting and Issue Finality

The NRC's backfitting provisions for holders of construction permits and operating licenses appear in § 50.109, "Backfitting." Issue finality provisions (analogous to the backfitting provisions in § 50.109) for applicants and holders of combined licenses are located in § 52.83, "Finality of referenced NRC

approvals; partial initial decision on site suitability," and § 52.98, "Finality of combined licenses; information requests." This section describes the backfitting and issue finality implications of the draft guidance documents described in section XVI, "Availability of Guidance," in this document and this proposed rule as applied to applicants and holders of pertinent NRC approvals. As stated in section III, "Discussion," in this document, the proposed changes to 10 CFR part 72 would not impose requirements on ISFSI-only licensees. Accordingly, the proposed rule would not constitute "backfitting" as that term is defined in § 72.62, "Backfitting."

A. Current and Future Applicants

Applicants and potential applicants (for licenses, permits, and regulatory approvals such as design certifications) are not, with certain exceptions, the subject of either the 10 CFR part 50 backfitting provisions or any issue finality provisions under 10 CFR part 52. The backfitting and issue finality regulations include language delineating when those provisions begin; in general, they begin after the issuance of a license, permit, or approval (e.g., § 50.109(a)(1)(iii), § 52.98(a)). Furthermore, neither the 10 CFR part 50 backfitting provisions nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed below—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants, and applicants have no reasonable expectation that future requirements will not change ("Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants; Final Rule," 54 FR 15372, at 15385–15386; April 18, 1989).

The exceptions to this general principle are applicable whenever a combined license applicant references a 10 CFR part 52 license (e.g., an early site permit) or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The issues that are resolved in an early site permit or a design certification and accorded issue finality do not include decommissioning matters that are the subject of this proposed rule and draft guidance, and the proposed rule and draft guidance do not contain design requirements. Therefore, the proposed rule and draft guidance would not affect the issue finality accorded early site permits and design certifications. For the same reasons, the issue finality provision applicable to combined license applicants (§ 52.83) would not

apply to a combined license applicant referencing either an early site permit or a design certification with respect to compliance with this rule.

B. Existing Design Certifications

The issues that are resolved in a design certification and accorded issue finality do not include decommissioning matters that are the subject of this proposed rule and draft guidance. Because the decommissioning matters that are the subject of this proposed rule and draft guidance are limited to nuclear power reactor decommissioning, they would not be applied to existing or future design certifications.

C. Existing Licensees

Section IV.A of this document describes a proposed alternative approach to the current requirements for radiological emergency preparedness at a nuclear power reactor. The proposed addition of 10 CFR 50.200 would not constitute backfitting or affect the issue finality of a COL because the proposed change would provide a voluntary alternative set of requirements. Backfitting is defined in § 50.109(a)(1) as, in relevant part, a modification of or addition to the systems, structures, or components (SSCs) or design of a facility, or the procedures or organization required to design, construct, or operate a facility, which results from a new or amended provision in the Commission's regulations. This proposed rule would not require holders of operating licenses and COLs to use the alternative emergency preparedness requirements, so the proposed change would not result in a modification or addition that would be backfitting or affect the issue finality of a COL.

Section IV.A of this document also describes other proposed changes related to emergency preparedness. The NRC would revise § 50.47 to add a paragraph (f) to explain when the planning standards of § 50.47(b) would no longer apply. Removing a requirement would not create a new requirement or amend a requirement because amending means the requirement still exists in some form. Without creating or amending a regulation, this proposed change would not meet the definition of "backfitting" or affect the issue finality of a COL.

The proposed changes to § 50.54(q) would be made to allow a licensee using the emergency preparedness framework of 10 CFR 50.200 to also use § 50.54(q). The proposed changes would not require a licensee to use the § 50.54(q) emergency plan change process or result

in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of "backfitting" or affect the issue finality of a COL.

The proposed change to § 50.54(s)(3) would clarify that FEMA findings and determinations are only necessary when the NRC's planning standards apply to offsite radiological emergency response plans. These changes to the NRC's and FEMA's review of emergency plans would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of "backfitting" or affect the issue finality of a COL.

The NRC is proposing to amend § 50.54(t) so licensees in decommissioning would be able to conduct emergency preparedness program element reviews at intervals not to exceed 24 months (rather than the current requirement of 12 months) without conducting an assessment against performance indicators. This proposed change would not constitute backfitting or affect the issue finality of a COL because the proposed change would provide a voluntary alternative requirement.

The NRC would add new § 50.54(t)(3) to remove the requirement to conduct periodic emergency preparedness program element reviews once all fuel is in dry cask storage. This proposed change would not meet the definition of "backfitting" or affect the issue finality of a COL because the NRC would be removing a requirement.

The addition of a new paragraph IV.8 to appendix E to 10 CFR part 50 would clarify that the evacuation time estimate requirements of paragraphs IV.4, IV.5, and IV.6 would no longer be applicable to licensees after permanent cessation of operations and permanent removal of fuel from the reactor vessel. This proposed change would not meet the definition of "backfitting" or affect the issue finality of a COL because the NRC would be removing a requirement.

The NRC would add a new paragraph k to part 50, appendix E, section IV.F.2 to state that licensees in decommissioning need to follow the biennial exercise requirements of section IV.F.2. This is the current requirement for these licensees, so this change to the regulations would not change a requirement. Therefore, the proposed change would not meet the definition of "backfitting" or affect the issue finality of a COL.

The NRC is proposing to remove obsolete dates for certain one-time actions that were required as part of the 2011 emergency preparedness final rule and other obsolete dates. These actions are complete, and the requirements are no longer binding on any current licensee. These proposed changes would not meet the definition of "backfitting" or affect the issue finality of a COL because the NRC would be removing a requirement.

The proposed changes to 72.32(a) would clarify the emergency plan requirements for an applicant of a specific license under 10 CFR part 72. As discussed in section IX.A. of this document, applicants such as this one are outside the scope of the 10 CFR part 50 backfitting provisions and issue finality provisions.

The proposed changes to 72.32(c) would clarify that the ISFSI licensee can rely on its 10 CFR part 50 emergency plan to meet the requirements of § 72.32 when the nuclear power reactor is under construction, operating, or in decommissioning. Other provisions of § 72.32 allow an ISFSI licensee with a reactor emergency plan to use that emergency plan to meet the applicable requirements for an ISFSI emergency plan. Therefore, this clarification would not meet the definition of "backfitting" or affect the issue finality of a COL because it would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility.

Section IV.B of this document describes proposed changes to physical security requirements. The NRC would permit a certified fuel handler to approve the temporary suspension of security measures once the reactor has shut down and all fuel has been removed from the reactor core. This proposed change would not constitute backfitting or affect the issue finality of a COL because the proposed change would provide a voluntary alternative requirement.

The proposed changes to § 50.54(p) would add definitions of "change" and "decrease in safeguard effectiveness" and require that reactor licensees include with the required § 50.54(p)(2) report a summary of the analysis performed to determine that the change does not decrease safeguards effectiveness of the security plan. The proposed changes would not require a licensee to use the § 50.54(p) security plan change process unless the licensee voluntarily seeks to change its security plan and would not result in a modification of or addition to SSCs or the design of a facility or the procedures

or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of “backfitting” or affect the issue finality of a COL.

The NRC would provide an option that, once all spent nuclear fuel has been placed in dry cask storage, licensees could protect a general license ISFSI under § 73.51 instead of § 73.55. This proposed change would not constitute backfitting or affect the issue finality of a COL because the proposed change would provide a voluntary alternative requirement.

Current § 73.55(b)(3) requires that a licensee’s physical protection program be designed to prevent significant core damage. The NRC would remove this requirement once the NRC has docketed the licensee’s certifications that its reactor has permanently ceased operating and all fuel has been removed from the reactor vessel. This proposed change would not constitute backfitting or affect the issue finality of a COL. The issue finality provision for COLs located in § 52.98 provides, in relevant part, that the Commission may not modify, add, or delete any term or condition of a COL except in accordance with the provisions of § 50.109. Under § 50.109, removing a requirement as proposed with § 73.55(b)(3) is not backfitting because removing a requirement does not create a new requirement and does not amend a requirement because amending means the requirement still exists in some form.

The proposed change to § 73.55(e)(9)(v) would remove the requirement that a licensee must designate the reactor control room as a “vital area” if the NRC has docketed the licensee’s certifications that the reactor has permanently ceased operating and all fuel has been removed from the reactor vessel, and the licensee has documented that all vital equipment has been removed from the control room and the control room does not serve as the vital area boundary for other vital areas. This proposed change would not constitute backfitting or affect the issue finality of a COL because the proposed change would be a voluntary alternative requirement. Even if a licensee submitted and the NRC docketed the certifications that the reactor has permanently ceased operating and all fuel has been removed from the reactor vessel, the licensee could still designate the reactor control room as a vital area. If not all of the vital equipment has been removed from the control room or the control room still serves as the vital area boundary for other vital areas, then the licensee would not be required to, and in fact could not, document that all vital

equipment has been removed from the control room or the control room does not serve as the vital area boundary for other vital areas, respectively.

The NRC would revise § 73.55(j)(4)(ii) to provide an alternative to the requirement for maintaining continuous communications between the alarm stations and the control room with a requirement for maintaining communications between alarm stations and the CFH or senior on shift licensee representative, once a licensee submits and the NRC docketed the certifications that the reactor has permanently ceased operating and all fuel has been removed from the reactor vessel. This proposed change would relax the requirement for these licensees. However, a licensee in decommissioning could maintain its control room such that its continuous communication system still communicates between the alarm stations and the control room. In this situation, the control room could redirect communications from the alarm stations to the certified fuel handler or the senior on-shift licensee representative as appropriate. Thus, a licensee could continue to comply with the current requirement to maintain continuous communications between the alarm stations and the control room and still satisfy the proposed rule. This makes the relaxation non-mandatory and, as explained in MD 8.4, non-mandatory relaxations of regulations generally do not meet the definition of “backfitting.” This proposed change would provide the voluntary relaxation of a current requirement and, thus, not constitute backfitting or affect the issue finality of a COL.

Section IV.C of this document describes proposed changes to cyber security requirements. The NRC would revise § 73.54 so the cyber security requirements in § 73.54 continue to apply to licensees through Level 1 of decommissioning. Each 10 CFR part 50 licensee has a license condition requiring the licensee to maintain its cyber security plan, and this license condition remains in effect during decommissioning. If the NRC issues an operating license for a nuclear power reactor before this final rule goes into effect, then the NRC can include a license condition similar to those issued to current holders of operating licenses for nuclear power reactors. Thus, this proposed change would not constitute backfitting for 10 CFR part 50 licensees.

A COL holder without the license condition is currently not required to maintain its cyber security plan when it begins decommissioning. The proposed revision to § 73.54 would constitute a change affecting the issue finality

accorded these COL holders because extending the requirement to maintain a cyber security plan during decommissioning would modify the terms and conditions of a COL. Under § 52.98, the NRC must apply the provisions of § 50.109 to the proposed change. The proposed change would constitute backfitting under § 50.109. The NRC’s backfit analysis justifying this backfitting action is presented in section IX.D of this document. If the NRC issues a COL before this final rule goes into effect, then the NRC can include a license condition similar to those issued to current holders of operating licenses for nuclear power reactors.

Section IV.D of this document describes proposed changes to fitness for duty requirements. The NRC proposes to amend § 26.3(a) so the requirements of 10 CFR part 26 would not apply to COL holders once the NRC has docketed their § 52.110(a) certifications. This proposed change would not affect the issue finality of a COL because the NRC would be removing a requirement.

The proposed changes to § 73.55(b)(9)(ii)(B) would provide minimum requirements for the fitness for duty elements of operating and decommissioning 10 CFR part 50 and 10 CFR part 52 licensees’ insider mitigation programs. These licensees are already required to comply with the insider mitigation program requirements of § 73.55(b)(9), so the proposed rule changes would clarify existing requirements and would not constitute backfitting or affect the issue finality of a COL.

The NRC proposes to amend the criminal penalties section of 10 CFR part 26 by including § 26.3 within § 26.825(a) by removing § 26.3 from § 26.825(b). This proposed change would not revise § 26.3 in any way. Enabling the NRC to impose criminal penalties for willful violations of, attempts to violate, or conspiracies to violate § 26.3 would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed change would not meet the definition of “backfitting” or affect the issue finality of a COL.

Section IV.E of this document describes proposed changes to the “certified fuel handler” definition and the elimination of the shift technical advisor. The NRC proposes to amend § 50.2 to provide an alternative definition of “certified fuel handler” to eliminate the need for licensees to submit requests for NRC approval of

CFH training programs. This proposed change would not constitute backfitting or affect the issue finality of a COL because the proposed change would provide a voluntary alternative to submitting a request for approval of a fuel handler training program.

The proposed change to § 50.54(m)(2)(i) to state that a shift technical advisor is not required upon the NRC's docketing of the license holder's certifications required under §§ 50.82(a)(1) or 52.110(a) would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed change would not meet the definition of "backfitting" or affect the issue finality of a COL.

Section IV.F of this document describes proposed changes to the NRC's decommissioning funding assurance requirements. The proposed change to § 50.75(f)(1) would modify the reporting frequency for reactor decommissioning funding reports from at least once every 2 years to at least once every 3 years. This reporting requirement would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility.

Therefore, the proposed change would not meet the definition of "backfitting" or affect the issue finality of a COL.

The NRC would revise § 50.75(h) to require certain notifications be sent directly to the NRC's Document Control Desk and not to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable. This reporting requirement would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed change would not meet the definition of "backfitting" or affect the issue finality of a COL.

The NRC proposes to delete § 50.75(f)(2). The language of existing § 50.75(f)(1) fully encompasses the language of paragraph (f)(2), and, therefore, paragraph (f)(2) is unnecessary and potentially confusing. This change would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility.

Therefore, the proposed change would not meet the definition of "backfitting" or affect the issue finality of a COL.

The NRC is proposing to amend its regulations in § 50.75(f)(1) to clarify that when a licensee identifies a shortfall in

the decommissioning funding report required by § 50.75(f)(1), the licensee must identify additional financial assurance to cover the shortfall in the next report. Licensees are already required to provide reasonable assurance of decommissioning funding on an ongoing basis. The proposed change would not change this obligation; the proposed rule would clarify how reasonable assurance of funds will be available for the decommissioning process. This change would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed change would not meet the definition of "backfitting" or affect the issue finality of a COL.

The proposed change to § 50.82(a)(9)(ii)(F) would require licensees to identify the specific sources of funds for "remaining decommissioning costs," including sources of funds for license termination, spent fuel management, and ISFSI decommissioning. This reporting requirement would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed change would not meet the definition of "backfitting" or affect the issue finality of a COL.

The NRC would revise § 50.82(a)(8)(v) to allow licensees to combine the reports that are required by §§ 50.82(a)(8)(v), 50.82(a)(8)(vii) and 72.30(c). This proposed change would not constitute backfitting or affect the issue finality of a COL because the proposed change would provide a voluntary alternative requirement.

The NRC proposes to revise § 52.110 to make the same changes proposed in § 50.82. For the reasons previously discussed, these proposed changes would not affect the issue finality of a COL. The NRC also proposes to add to § 52.110 paragraphs (h)(5) through (h)(7) with site-specific decommissioning cost estimate reporting requirements that are identical to the requirements in § 50.82(a)(8)(v) through (vii). These reporting requirements would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of "backfitting" and, under § 52.98, would not affect the issue finality of a COL.

The NRC proposes to revise § 72.30 so that the submittals subsequent to the initial decommissioning funding plan

would no longer require NRC approval. This proposed change would not meet the definition of "backfitting" or affect the issue finality of a COL because the NRC would be removing a requirement.

The proposed changes to § 72.30(b) would clarify the requirements for an applicant for a specific licensee and a holder of a general license to submit decommissioning funding plans for NRC review and approval. The current requirement requires applicants and holders of licenses under 10 CFR part 72 to submit decommissioning funding plans for NRC review and approval. These changes would not change any substantive requirement and would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Accordingly, these proposed changes would not constitute backfitting or affect the issue finality of a COL.

Section IV.G of this document describes proposed changes to the NRC's onsite and offsite financial protection requirements and indemnity agreements. These changes would include revisions to the following regulations: §§ 140.11(a)(5) and 50.54(w)(5), to allow nuclear power reactor licensees in decommissioning to reduce the offsite liability and onsite property insurance amounts, respectively, that they are required to maintain; § 140.81, to include plants in decommissioning within the scope of § 140.81, thereby clarifying the applicability of the requirements for an Extraordinary Nuclear Occurrence ENO to reactors in decommissioning; and § 50.54(w), to require a prompt notification to the Commission of any material change in proof of onsite property insurance filed with the Commission under 10 CFR part 50.

Changes to 10 CFR part 140 are not subject to the 10 CFR part 50 backfitting provisions and the issue finality provisions in 10 CFR part 52 because the Price-Anderson Act requires licensees to have offsite financial protection. Even if they were subject to the 10 CFR part 50 backfitting provisions and the issue finality provisions in 10 CFR part 52, the proposed changes would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of "backfitting" and would not affect the issue finality of a COL.

Similarly, the onsite insurance requirements in § 50.54(w) do not fall within the purview of the 10 CFR part

50 backfitting provisions or the issue finality provisions in 10 CFR part 52. In the backfitting discussion for the 1987 final rule, "Changes in Property Insurance Requirements for NRC Licensed Nuclear Power Plants" (52 FR 28963, 28972; August 5, 1987), the Commission stated that requiring an increase in property damage insurance does not meet the definition of "backfitting." The Commission took similar positions on backfitting in subsequent rulemakings to amend § 50.54(w) (e.g., 54 FR 11163, March 17, 1989; 55 FR 12163, April 2, 1990).

Section IV.H of this document describes proposed changes to the requirements concerning consideration of environmental effects of decommissioning activities. The NRC proposes to change § 50.82(a)(4)(i) and § 52.110(d)(1) to require that licensees provide the basis for determining whether the environmental impacts of decommissioning activities are bounded by previous environmental reviews and include a description in the PSDAR of any activities that will not be bounded. These reporting requirements would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of "backfitting" and would not affect the issue finality of a COL.

The NRC also proposes to change § 50.82(a)(4)(i) and § 52.110(d)(1) to allow licensees to use appropriate federally issued environmental review documents prepared in compliance with NEPA, ESA, NHPA, or other environmental statutes instead of only environmental impact statements. These reporting requirements would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of "backfitting" and would not affect the issue finality of a COL.

The NRC would change § 50.82(a)(6)(ii) and § 52.110(f)(2) to clarify that the previous review of any potentially significant environmental impact must be bounded by appropriate federally issued environmental review documents prepared in compliance with NEPA, ESA, NHPA, or other environmental statutes. These reporting requirements would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would

not meet the definition of "backfitting" and would not affect the issue finality of a COL.

The NRC proposes to revise 10 CFR part 51 to reflect the changes made in the 1996 Final Rule that nuclear power reactor licensees are not required to submit license amendment requests for authorization to perform decommissioning activities. These changes would not change any substantive requirement and would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Accordingly, these proposed changes would not constitute backfitting or affect the issue finality of a COL.

Section IV.I of this document describes proposed changes to record retention requirements. These changes would eliminate certain recordkeeping requirements and the requirement to keep certain duplicate records. These recordkeeping changes would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of "backfitting" and would not affect the issue finality of a COL. The proposed changes also would not meet the definition of "backfitting" or affect the issue finality of a COL because the NRC would be removing these requirements.

Section IV.J of this document describes proposed changes to low-level radioactive waste transportation requirements. The NRC would revise Paragraph III.E of appendix G to 10 CFR part 20 to increase from 20 days to 45 days the window of time for notification of receipt of shipments of low-level waste before a shipper would be required to investigate, trace, and report to the NRC any shipments of low-level waste for which the shipper has not received a notification of receipt. This proposed change would relax the requirement. However, a shipper could still investigate, trace, and report shipments of low-level waste if the shipper has not received notification of receipt within 20 days. Thus, a shipper could continue to comply with the current 20-day requirement and still satisfy the proposed rule. This makes the relaxation non-mandatory and, as explained in MD 8.4, non-mandatory relaxations of regulations generally do not meet the definition of "backfitting." This proposed change would provide the voluntary relaxation of a current requirement and, thus, not constitute backfitting or affect the issue finality of a COL.

Section IV.K of this document describes proposed changes to spent fuel management requirements. The NRC would revise §§ 50.54(bb) and 72.218 to clarify the contents of an irradiated fuel management plan, which licensees are already required to submit to the NRC for approval. This clarification of a reporting requirement would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of "backfitting" and would not affect the issue finality of a COL.

The NRC proposes to change § 72.218 to remove spent fuel management provisions that the NRC would move to § 50.54(bb) and clarify provisions concerning termination of part 72 general licenses. The proposed changes would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of "backfitting" and would not affect the issue finality of a COL.

Section IV.L of this document describes proposed changes to the NRC's backfitting provisions in 10 CFR part 50 and part 72. The NRC proposes to change § 50.109 to clarify application of the 10 CFR part 50 backfitting provisions to NRC actions constituting backfitting or affecting the issue finality of nuclear power reactor licensees in decommissioning. The NRC also would revise § 50.109 to require a documented evaluation to include a consideration of the costs of imposing the backfit if the basis for backfitting is bringing a facility into compliance with a license or the rules or orders of the Commission, or into conformance with the licensee's written commitments. The proposed change to § 72.62 would clarify that the backfit regulations in part 72 apply during the decommissioning of an independent spent fuel storage installation or a monitored retrievable storage facility. The proposed changes to backfitting provisions would be changes to requirements imposed on the NRC, not on a licensee, so the proposed changes would be outside the scope of backfitting and issue finality.

Section IV.M of this document describes proposed changes to the NRC's regulations related to foreign ownership, control, or domination of a production or utilization facility. The NRC would revise § 50.38 to clarify when a facility licensed under 10 CFR

part 50 or part 52 is not considered a production or utilization facility and, therefore, the foreign ownership, control, or domination prohibition no longer applies. The proposed changes would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of “backfitting” and would not affect the issue finality of a COL.

The NRC also would amend § 50.82(b) to add the criteria for when a non-power production or utilization facility or fuel reprocessing plant is no longer a production or utilization facility. The only part 50 licensees considered within the scope of the part 50 backfitting provision are nuclear power reactor licensees. Further, the proposed changes would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of “backfitting.”

The NRC would revise § 50.82(a) and (b) and § 52.110(b) to affirm the continuation of the NRC’s statutory authority over the existing 10 CFR part 50 or 10 CFR part 52 license, and to state which regulations would still apply to the licensee, after the performance of decommissioning activities that lead to the licensed facility no longer meeting the definition of a utilization or a production facility. The proposed changes would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of “backfitting” and would not affect the issue finality of a COL.

In light of the proposed amendments to §§ 50.38, 50.82, and 52.110, the NRC would amend §§ 50.1, 50.51, 52.0, and 52.109 to clarify that the regulations in 10 CFR part 50, and the similar regulations in 10 CFR part 52, provide not only for the licensing of utilization and production facilities, but also for their decommissioning and the termination of their associated licenses. The proposed changes would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed changes would not meet the definition of “backfitting” and would not affect the issue finality of a COL.

The NRC is proposing to add a definition for “non-power production or utilization facility” to § 50.2 that captures all non-power facilities licensed under § 50.22 and § 50.21(a) or (c), except fuel reprocessing facilities. The only part 50 licensees considered within the scope of the part 50 backfitting provision are nuclear power reactor licensees. Further, the proposed definition would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility.

Therefore, the proposed changes would not meet the definition of “backfitting.”

Section IV.N of this document describes proposed changes to license termination plan requirements. The NRC would revise § 50.82(a)(9) and § 52.110(i) to clarify that only nuclear power reactor licensees that have loaded fuel into their reactors must submit license termination plans. The proposed change would not change this requirement; the proposed rule would only clarify that nuclear power reactor licensees that have not loaded fuel into their reactors would not need to submit license termination plans. This change would not result in a modification of or addition to SSCs or the design of a facility or the procedures or organization required to design, construct, or operate a facility. Therefore, the proposed change would not meet the definition of “backfitting” or affect the issue finality of a COL.

Section IV.O of this document describes the proposed removal of license conditions and withdrawal of orders. These changes would not change any substantive requirement because the license conditions and orders are substantively redundant with NRC regulations issued after the license conditions and orders were issued. Because the NRC would not change a requirement, the proposed changes would not meet the definition of “backfitting” or affect the issue finality of a COL.

D. Backfit Analysis

1. Introduction and Background

As part of this proposed rule, the NRC is proposing a modification to the cyber security requirements in § 73.54. This proposed rule would ensure that these requirements continue to apply to nuclear power reactor licensees that have submitted their § 50.82(a)(1) or § 52.110(a) certifications until such time that all spent fuel in the SFP has sufficiently decayed (*i.e.*, at least 10 months for BWRs and 16 months for PWRs after the date of permanent

cessation of operations, or an NRC-approved alternative spent fuel decay period).

This amendment would likely constitute a change affecting issue finality for 10 CFR part 52 COL holders, as defined in § 52.98. These licensees are not currently required to maintain their cyber security programs past the date that they are no longer authorized to operate the reactor. If the proposal to require these licensees to maintain their cyber security program into the decommissioning phase would extend the duration that a COL holder would be required to maintain a cyber security program, then that extension would constitute a new or changed requirement for that licensee and, thus, affect that COL’s issue finality.

2. Detailed Description of the Proposed Change Affecting Issue Finality

The NRC sets forth the current cyber security requirements for nuclear power reactors in § 73.54. The NRC established these requirements as part of the 2009 Power Reactor Security Requirements final rule. The preamble to § 73.54 states, in part, that by November 23, 2009, each nuclear power reactor licensee “currently licensed to operate” must submit to the NRC a cyber security plan (CSP) for review and approval. The preamble further states that the requirements in § 73.54 are applicable to current “applicants for an operating license or combined license” and mandates such applicants to amend their applications to include a CSP. In addition, every 10 CFR part 50 license for a nuclear power reactor that was operating in 2009 contains a license condition to have and maintain a Commission-approved CSP. These license conditions were issued when the NRC approved each licensee’s CSP that was submitted to the NRC as required by the Power Reactor Security Requirements final rule. The Tennessee Valley Authority’s 10 CFR part 50 operating license for Watts Bar Nuclear Plant, Unit 2, issued in 2015, also contains a license condition to have and maintain a CSP.

As an initial step in the decommissioning process, a nuclear power reactor licensee must submit written certifications that it has decided to permanently cease operations and has permanently removed all fuel from its reactor vessel, in accordance with § 50.82(a)(1)(i) and (ii) for nuclear power reactor licensees under 10 CFR part 50, or § 52.110(a)(1) and (2) for 10 CFR part 52 combined license holders. As stated in § 50.82(a)(2) and § 52.110(b), upon the NRC’s docketing of these certifications, the license no longer

authorizes operation of the reactor or the placement or retention of fuel in the reactor vessel. In a December 5, 2016 memorandum to the Commission, the NRC staff explained that § 73.54 no longer applies to nuclear power reactor licensees once they have submitted, and the NRC has docketed, these certifications.

As discussed in the “*Technical Basis for Graded Approach*” section of this document, the NRC has concluded that after 10 months for BWRs and 16 months for PWRs, the spent fuel in the SFP will have decayed and cooled sufficiently such that the fuel cannot heat up to clad ignition temperature within 10 hours under adiabatic conditions. The NRC has determined that until the fuel has decayed and cooled sufficiently, nuclear power reactor licensees must maintain reasonable assurance that their critical digital assets remain protected against cyber attacks. As such, this proposed rule would modify the cyber security requirements in § 73.54 to ensure that they continue to apply to licensees of decommissioning nuclear power reactors until the spent fuel has decayed and cooled sufficiently (either through the application of a 10 month (BWR) or 16 month (PWR) decay period or an NRC-approved site-specific decay period). This proposed rule would also remove the CSP license condition from the 10 CFR part 50 licenses at the applicable 10 or 16 month interval.

This proposed rule would not constitute backfitting for currently operating or recently shutdown 10 CFR part 50 reactor licensees. Their CSP license condition remains in effect until the termination of the license or the NRC removes the condition from the license (e.g., if the licensee submits a license amendment request and the NRC approves it). The NRC has determined that the requirements of the CSP license conditions are not necessary after the spent fuel in the SFP has sufficiently cooled. The proposed rule would codify, during Level 1 of decommissioning, the already-imposed requirements of the CSP license conditions. These requirements would continue to provide adequate protection of the public health and safety and common defense and security and continue to support the effective operation of licensees’ security and emergency preparedness programs during the time when a draindown scenario can credibly lead to a zirconium fire. (See sections 3 and 4 of this backfit analysis for additional cost/benefit discussion.) Therefore, this proposed rule would not impact these licensees’ overall requirement to

maintain a cyber security program, but would instead enable the automatic removal of cyber security requirements once fuel in the SFP has sufficiently cooled. Thus, the decommissioning rulemaking would not impose a new or changed requirement as the licensees are already implementing the requirement as part of their cyber security program license conditions.

Conversely, this rulemaking would constitute a change affecting the issue finality for 10 CFR part 52 COL holders. Each currently approved COL includes a license condition to provide the NRC with the licensee’s Operational Program Implementation Schedule. The operational programs (which include development and implementation of a security program, including a cyber security program) are requirements in the regulations and not separately identified as license conditions. As a result, a COL does not require the licensee to maintain the cyber security program throughout the duration of its license. COL holders are currently required to maintain a program only as long as § 73.54 is applicable to them. Because § 73.54 no longer applies to the licensee once it is not authorized to operate a nuclear power reactor, and a nuclear power reactor licensee is not authorized to operate a nuclear power reactor during decommissioning, COL holders are not required to maintain their CSP during decommissioning. This proposed rule, which would require licensees to maintain their cyber security program for 10 months (BWR) or 16 months (PWR) beyond the date of permanent cessation of operations (or for an NRC-approved alternative spent fuel decay period) could extend the duration over which a COL holder would be required to maintain a cyber security program. That extension would constitute a new or changed requirement for that licensee.

Under § 52.98, the Commission cannot modify any term or condition of an issued combined license except in accordance with the provisions of § 52.103 or § 50.109, as applicable. This proposed rule’s amendment of the cyber security requirements would constitute a change affecting the issue finality of the COLs issued at the time of the final rule’s effective date. The provisions of § 52.103 do not apply to this proposed rule, so the NRC must show that the amendment would meet the requirements of § 50.109 to justify proceeding with this amendment. Because none of the exceptions to the requirement to prepare a backfit analysis in § 50.109(a)(4) applies to this rulemaking, § 50.109(a)(3) requires the NRC to prepare a backfit analysis that

demonstrates that the proposed amendment would result in a substantial increase in the overall protection of the public health and safety or the common defense and security, and that the direct and indirect costs of implementation are justified in view of this increased protection.

3. Benefits: Substantial Increase in Public Health and Safety and Common Defense and Security

The NRC identified qualitative (non-quantifiable) benefits that would occur if the proposed change affecting issue finality were implemented.

The NRC identified two qualitative benefits to the common defense and security and public health and safety that would be realized if the proposed rule is implemented. Specifically, the NRC finds that extending the duration over which the licensee must maintain cyber security requirements would:

- Constitute a substantial increase in protection to common defense and security by ensuring that a compromise of digital systems cannot adversely impact the effective operation of licensees’ physical security programs; and
- Constitute a substantial increase in public health and safety by ensuring that a compromise of digital systems cannot adversely impact the effective operation of emergency preparedness systems in the event of a zirconium fire scenario.

Effective Operation of Physical Security Program

The NRC has previously determined that attacks on the SFP are credible and have the potential to lead to an unacceptable impact to common defense and security. Specifically, a physical attack by either an external force or malicious insiders could directly lead to a draindown scenario and subsequent zirconium fire.

As established in § 73.54, cyber security is an essential element of a licensee’s physical security program that enables the licensee to effectively protect its site against the design basis threat of radiological sabotage defined in § 73.1, in accordance with § 73.55(b). Specifically, a physical attack that is augmented with a coincident cyber attack would, in many cases, have a higher chance of success over a purely physical attack. Thus, although there is no cyber attack that can directly lead to a draindown scenario, a cyber attack can be combined with a physical attack on the SFP to improve the physical attack’s likelihood of success.

Given a facility without adequate cyber security controls in place, several

mechanisms exist that could improve the effectiveness of a physical attack on the SFP. For example, a cyber attack could aid a physical assault on the SFP by an external attacker by:

- Disabling perimeter detection to delay or prevent onsite response to the physical assault prior to the attacker gaining entry to the SFP
- disrupting onsite and offsite security-related communication to reduce the effectiveness of the licensee's response to the physical assault
- disabling access control doors and gates to enable the attacker expedited physical access to the SFP

In addition, inadequate cyber security controls on facilities' access control systems could enable an attacker to inject information into a licensee's access control system in a manner that would allow unauthorized individuals to obtain unescorted access into the protected or vital areas of the facility. This could allow one or more attackers direct access to the SFP, which could then be exploited to sabotage the SFP in a manner that would result in a draindown scenario.

This factor, combined with the severity of the consequences of a draindown scenario and subsequent zirconium fire that could result from a successful physical attack, demonstrates that maintaining cyber security requirements during the period when a draindown scenario could reasonably result in a zirconium fire (*i.e.*, prior to the fuel in the SFP sufficiently cooling) represents a substantial increase in security.

Effective Operation of Emergency Preparedness Systems

As discussed in the “*Technical Basis for the Graded Approach*” and “*Emergency Preparedness*” sections of this document, although the spectrum of credible accidents and operational events requiring an emergency response is reduced at a decommissioning nuclear power reactor as compared to that for an operating nuclear power reactor, reliable emergency preparedness functions are still required to ensure public health and safety in the event of a zirconium fire scenario.

As established in § 73.54, cyber security is an essential element of a licensee's physical security program that, in part, ensures that a compromise of digital systems cannot adversely impact emergency preparedness functions. For example, in the event of a zirconium fire scenario, the licensee's cyber security program prevents a cyber attack from adversely impacting the ability to:

- Notify state, local, and Federal personnel of the emergency
- Request and communicate with offsite support
- Assess and classify the emergency conditions
- Disseminate information to the public during an emergency
- Conduct a radiological accident assessment

The NRC has determined that this factor demonstrates that maintaining cyber security requirements to ensure that a compromise of digital systems cannot adversely impact the operation of emergency preparedness functions until the time in which a SFP draindown would likely be mitigated prior to a zirconium fire scenario (*i.e.*, once the fuel in the SFP has sufficiently cooled) represents a substantial increase in public health and safety.

4. Costs

The NRC identified quantitative costs (*i.e.*, costs that are amenable to quantitative evaluation) that would be incurred if the proposed change affecting issue finality were implemented.

Based on a review of feedback received during recent inspections of the full implementation of licensees' cyber security programs, the NRC estimates that the cost to implement a cyber security program for a decommissioning nuclear power reactor is approximately \$300,000 per site per year. As previously stated, this proposed change affecting issue finality would extend the duration that a licensee must maintain its cyber security program for 10 (BWR) or 16 (PWR) months. Thus, the cost associated with this extension is approximately \$250,000 (BWR) or \$400,000 (PWR).

COLs have been issued at a total of 3 sites that utilize BWR units, and 4 sites that utilize PWR units. Assuming that all units are constructed and the per-site costs from the previous paragraph, the total cost associated with this proposed change affecting issue finality if all reactors entered decommissioning today would be approximately \$2.35 million. If it is assumed that all sites with units licensed under 10 CFR part 52 decommission their reactors 40 years after the effective date of the final rule, with a discount rate of 7 percent, then the total, combined cost for all affected licensees associated with this proposed change affecting issue finality would be approximately \$157,000. Due to the potential that some of these facilities may not be constructed or that some licensees may have voluntarily chosen to maintain their cyber security

programs during this timeframe, this estimate is expected to be an upper bound.

5. Determination of Substantial Benefits Justifying Costs of the Proposed Change Affecting Issue Finality

The NRC finds that the proposed change affecting issue finality would provide a substantial increase in protection to public health and safety and common defense and security for current 10 CFR part 52 COL holders by ensuring that a compromise of digital systems cannot adversely impact the effective operation of licensees' security and emergency preparedness programs during the time when a draindown scenario can credibly lead to a zirconium fire. The NRC finds that this substantial increase would justify the \$157,000 in costs that would accrue to the licensees.

6. Conclusion

On the basis of this analysis, the NRC determines that the change affecting issue finality resulting from the cyber security portion of this proposed rule would be justified under § 50.109(a)(3).

7. Evaluation of Factors in § 50.109(c)(1) Through (9)

In performing this analysis, the NRC considered the nine factors in § 50.109(c), as follows:

Statement of the Specific Objectives That the Backfit Is Designed To Achieve

The two objectives for the cyber security portion of the “Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning” rulemaking are:

- To ensure the effectiveness of the physical protection program during the period over which a SFP draindown could realistically result in a zirconium fire scenario; and
- To ensure the effectiveness of emergency preparedness functions during the period over which a SFP draindown may not be mitigatable prior to the draindown resulting in a zirconium fire

Note that the change affecting issue finality is only applicable to nuclear power reactors licensed under 10 CFR part 52 as of the effective date of the final rule.

General Description of the Activity That Will Be Required by the Licensee or Applicant in Order To Complete the Backfit

The NRC is proposing a modification to the cyber security requirements in § 73.54 to ensure that these requirements continue to apply to

licensees of decommissioning nuclear power reactors until such time that all spent fuel in the SFP has sufficiently decayed (*i.e.*, 10 months for BWRs and 16 months for PWRs since the date of permanent cessation of operations, or an NRC-approved alternative spent fuel decay period). The change affecting issue finality is only applicable to nuclear power reactors currently licensed under 10 CFR part 52 as of the effective date of the final rule.

Potential Change in the Risk to the Public From the Accidental Off-Site Release of Radioactive Material

The rulemaking is intended to reduce risk of offsite releases as a result of breaches in security at nuclear power plants, and to ensure the functionality of emergency preparedness functions in the case of a zirconium fire scenario. However, the reduction in risk to the public from offsite releases of radioactive materials has not been fully quantified because there is insufficient information and modeling to support such quantification.

Potential Impact on Radiological Exposure of Facility Employees

The rulemaking would provide added assurance that nuclear industry workers are not subjected to unnecessary radiological exposures as the result of a breach in security that causes a zirconium fire leading to a release of radiation that security personnel are exposed to as the result of their response activities. Further, the rulemaking would ensure that emergency preparedness functions, including evacuation procedures, are not adversely impacted by a cyber attack during the period when a draindown scenario could reasonably result in a zirconium fire, thus ensuring that nuclear industry workers are not subjected to unnecessary radiological exposures in the case of a zirconium fire scenario.

Installation and Continuing Costs Associated With the Backfit, Including the Cost of Facility Downtime or the Cost of Construction Delay

The backfit analysis to support the change affecting issue finality resulting from this proposed rule includes the NRC's estimate of the total costs for maintaining a licensee's cyber security program until the fuel in the SFP has sufficiently cooled to adequately ensure that a SFP draindown does not result in a zirconium fire scenario. The estimated one-time industry net cost associated with the change affecting issue finality would be approximately \$157,000.

The Potential Safety Impact of Changes in Plant or Operational Complexity, Including the Relationship to Final and Existing Regulatory Requirements

The cyber security portion of this proposed rule would not impose any requirements beyond those in place while the nuclear power reactor is operational. As such, this rule is not expected to have an effect on facility complexity.

The Estimated Resource Burden on the NRC Associated With the Backfit and the Availability of Such Resources

The rulemaking may result in a minor increase in the expenditure of agency resources, due to the potential for cyber security inspections to be conducted after the licensee has ceased operations and before fuel in the SFP has sufficiently cooled.

The Potential Impact of Differences in Facility Type, Design or Age on the Relevancy and Practicality of the Backfit

The specific cost of this rulemaking to a facility does vary, depending on whether the facility utilizes BWR or PWR reactors. This is due to time required for fuel in the SFP to sufficiently cool for each type of reactor. Further, since the change affecting issue finality is only applicable to reactors licensed under 10 CFR part 52, the specific cost also depends on the percentage of reactors licensed under 10 CFR part 52 at the licensee's facility.

Whether the Backfit is Interim or Final and, if Interim, the Justification for Imposing the Backfit on an Interim Basis

The change affecting issue finality would be final.

E. Draft Regulatory Guidance

As described in Section XVI, "Availability of Guidance," in this document, the NRC is issuing four draft regulatory guides (DGs) that, if finalized, would provide guidance on the methods acceptable to the NRC for complying with aspects of this proposed rule. The DGs would apply to all current holders of operating licenses under 10 CFR part 50 and COLs under 10 CFR part 52. Issuance of the DGs in final form would not constitute backfitting under § 50.109 and would not otherwise constitute a change affecting issue finality under 10 CFR part 52. As discussed in the "Implementation" section of each DG, the NRC has no current intention to impose the DGs on current holders of an operating license or COL.

For the same reasons provided under "Current and Future Applicants" that explain why the proposed rule does not constitute backfitting or a change

affecting issue finality for applicants, applying the DGs to applications for operating licenses or COLs would not constitute backfitting as defined in § 50.109 and would not otherwise constitute a change affecting issue finality under 10 CFR part 52.

X. Cumulative Effects of Regulation

The NRC is following its Cumulative Effects of Regulation (CER) process by engaging extensively with external stakeholders throughout this rulemaking and related regulatory activities. Public involvement has included: (1) The publication of an ANPR for public comment (80 FR 72358) on November 19, 2015, to inform the NRC's efforts in drafting a proposed rule regulatory basis to address issues associated with nuclear power reactor decommissioning; (2) holding a public meeting on December 9, 2015, to afford external stakeholders an opportunity to ask the NRC staff clarifying questions regarding the ANPR; (3) the publication of the draft regulatory basis for public comment (82 FR 13778) on March 15, 2017; (4) the publication of a preliminary draft of the regulatory analysis for public comment (82 FR 21481) on May 9, 2017; and (5) holding a public meeting on May 8–10, 2017, to facilitate public comments on the development of the final regulatory basis and regulatory analysis.

Another opportunity for comment is being provided to the public with this proposed rule. The NRC will be issuing the draft implementing guidance with this proposed rule to support more informed external stakeholder feedback. Further, the NRC will continue to hold public meetings throughout the rulemaking process. Section XVI, "Availability of Guidance," of this document describes how the public can access the draft implementing guidance for which the NRC seeks external stakeholder feedback.

Finally, the NRC is requesting CER feedback on the following questions:

1. In light of any current or projected CER challenges, does the proposed rule's effective date provide sufficient time to implement the new proposed requirements, including changes to programs, procedures, and facilities?

2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for implementation of the new requirements, what period of time is sufficient?

3. Do other (NRC or other agency) regulatory actions (*e.g.*, orders, generic communications, license amendment requests, inspection findings of a generic nature) influence the

implementation of the proposed rule's requirements?

4. Are there unintended consequences? Does the proposed rule create conditions that would be contrary to the proposed rule's purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?

5. Please comment on the NRC's cost and benefit estimates in the draft regulatory analysis that supports the proposed rule. The draft regulatory analysis is available as indicated in the "Availability of Documents" section of this document.

XI. Plain Writing

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

XII. National Environmental Policy Act

This proposed rule includes some actions that are of the types described in § 51.22(c). The NRC has previously determined that these types of actions do not have a significant impact on the environment and has categorically excluded them from the requirement to prepare an environmental analysis. Specifically, the NRC has determined that some amendments in this proposed rule are the types of actions described in the § 51.22(c) exclusions noted in Table 4. Accordingly, the NRC has not developed an environmental impact statement or an environmental assessment for these portions of the proposed rule.

TABLE 4—APPLICATION OF 10 CFR 51.22 CATEGORICAL EXCLUSIONS TO THE PROPOSED REQUIREMENTS

Regulation	Applicable 10 CFR 51.22 paragraph
10 CFR part 26	(c)(1), (c)(3).
10 CFR 50.2	(c)(2), (c)(3).
10 CFR 50.54(bb)	(c)(3).
10 CFR 50.59(d)	(c)(3).
10 CFR 50.71(c)	(c)(3).
10 CFR 50.75(f)	(c)(3).
Elimination of 10 CFR 50.75(f)(2).	(c)(2).
10 CFR 50.82(a)	(c)(2), (c)(3).
10 CFR 50.109	(c)(2).
10 CFR part 50, appendix A ...	(c)(3).
10 CFR part 20, appendix G ..	(c)(3).
10 CFR 51.53	(c)(3).

TABLE 4—APPLICATION OF 10 CFR 51.22 CATEGORICAL EXCLUSIONS TO THE PROPOSED REQUIREMENTS—Continued

Regulation	Applicable 10 CFR 51.22 paragraph
10 CFR 51.95	(c)(3).
10 CFR 52.63	(c)(3).
10 CFR 52.110	(c)(2).
10 CFR 72.72	(c)(3).
10 CFR 72.218	(c)(3).
10 CFR part 140	(c)(1).

Draft Finding of No Significant Impacts

The NRC has prepared a draft environmental assessment (EA) for the portions of this proposed rule not categorically excluded under § 51.22. The draft EA is available in ADAMS at Accession No. ML22019A140. The NRC prepared the draft EA to determine environmental impacts of the proposed action: A rulemaking to update the NRC's regulations related to production and utilization facilities transitioning to decommissioning. Based on the draft EA, the NRC concludes that this proposed rule would not have significant environmental impacts because the changes would be administrative or procedural in nature and would have no nexus to the physical environment or would have no significant impact on the environment. Therefore, this proposed rule does not warrant preparation of an environmental impact statement. Accordingly, the NRC has determined that a finding of no significant impact (FONSI) is appropriate.

XIII. Paperwork Reduction Act

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-21). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collections.

Type of submission, new or revision: Revision.

The title of the information collection: Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning, Proposed Rule.

The form number if applicable: Not applicable.

How often the collection is required or requested: Annually and on occasion.

Who will be required or asked to respond: Production and utilization facility licensees.

An estimate of the number of annual responses: 102 (1 response for 10 CFR

part 20, 0 responses for 10 CFR part 26, 97 responses for 10 CFR part 50, 0 responses for 10 CFR part 52, 1 response for 10 CFR part 72, and 3 responses for 10 CFR part 73).

The estimated number of annual respondents: 62 (1 respondent for 10 CFR part 20, 0 respondents for 10 CFR part 26, 62 respondents for 10 CFR part 50, 0 respondents for 10 CFR part 52, 20 respondents for 10 CFR part 72, and 1 respondent for 10 CFR part 73).

An estimate of the total number of hours needed annually to comply with the information collection requirement or request: -3,658 (-77.5 hours for 10 CFR part 20, 0 hours for 10 CFR part 26, -3,114.5 hours for 10 CFR part 50, 0 hours for 10 CFR part 52, -436 hours for 10 CFR part 72, and -30 hours for 10 CFR part 73).

Abstract: The proposed rule would result in changes in recordkeeping and reporting burden relative to existing rules by creating a regulatory framework for production and utilization facility licensees transitioning to decommissioning and amending existing regulations that relate to the decommissioning of production and utilization facilities. Decommissioning nuclear power reactor licensees and the NRC have expended substantial resources processing licensing actions for nuclear power reactors during their transition period to decommissioning status. Licensees that are currently transitioning to decommissioning have been requesting NRC review and approval of licensing actions, informed by the low risk of an offsite radiological release posed by a decommissioning reactor. Specifically, the licensees are seeking NRC approval of exemptions and license amendments to revise requirements to reflect the reduced operations and risks posed by a permanently shutdown and defueled reactor. The proposed rule would, on balance, reduce the paperwork burden imposed on production and utilization facility licensees transitioning to decommissioning by establishing a graded approach to the requirements imposed on these facilities. A graded approach would adjust the level of analysis, documentation, and actions necessary to comply with safety requirements and criteria commensurate with several factors, including magnitude of any credible hazard involved, and the balance between radiological and non-radiological hazards as applicable to the level within the decommissioning process. The NRC expects that these proposed changes would enhance the efficiency of the decommissioning process and reduce the overall burden on licensees.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of the burden of the proposed information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package and proposed rule is available in ADAMS under Accession No. ML18039A192 or can be obtained free of charge by contacting the NRC’s Public Document Room reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. You may obtain information and comment submissions related to the OMB clearance package by searching on <https://www.regulations.gov> under Docket ID NRC–2015–0070.

You may submit comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by the following methods:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2015–0070.
- *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T6–A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0014, –0146, –0011, –0151, –0132, –0002), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: oira_submission@omb.eop.gov.

Submit comments by April 4, 2022. Comments received after this date will be considered if it is practical to do so,

but the NRC staff is able to ensure consideration only for comments received on or before this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XIV. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act of 1954, as amended (AEA), the NRC is issuing this proposed rule that would amend or add §§ 26.3, 50.47, 50.54, 50.59, 50.71, 50.75, 50.82, 50.200, 52.110, 72.30, 72.72, 72.212, 72.218, 73.51, 73.54, 73.55, and 140.11 as well as appendix G to 10 CFR part 20, appendix A to 10 CFR part 50, and appendix E to 10 CFR part 50, under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of these provisions would be subject to criminal enforcement. Criminal penalties as they apply to regulations in 10 CFR parts 20, 26, 50, 52, 72, 73 and 140 are discussed in §§ 20.2402, 26.825, 50.111, 52.303, 72.86, 73.81 and 140.89.

XV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would revise regulations associated with decommissioning in 10 CFR parts 20, 26, 50, 51, 52, 72, 73, and 140. This action would not constitute the establishment of a standard that contains generally applicable requirements.

XVI. Availability of Guidance

The NRC is issuing for comment four draft regulatory guides to support the implementation of the proposed requirements in this proposed rule, as well as to support other recommendations made in the supporting regulatory bases regarding areas where the decommissioning

guidance could be improved or enhanced. You may access information and comment submissions related to the Draft Guides (DGs) by searching on <https://www.regulations.gov> under Docket ID NRC–2015–0070. You may submit comments on this draft guidance by the methods outlined in the **ADDRESSES** section of this document.

1. The DG–1346, “Emergency Planning for Decommissioning Nuclear Power Reactors” (ADAMS Accession No. ML21347A046), is a new regulatory guide.
2. The DG–1347, “Decommissioning of Nuclear Power Reactors,” (ADAMS Accession No. ML21347A080), would be Revision 2 to the existing Regulatory Guide 1.184.
3. The DG–1348, “Assuring the Availability of Funds for Decommissioning Production or Utilization Facilities,” (ADAMS Accession No. ML21347A081), would be Revision 2 to the existing Regulatory Guide 1.159.
4. The DG–1349, “Standard Format and Content for Post-Shutdown Decommissioning Activities Report,” (ADAMS Accession No. ML21347A138), would be Revision 2 to the existing Regulatory Guide 1.185.

XVII. Public Meeting

The NRC will conduct a public meeting on this proposed rule for the purpose of describing this proposed rule to the public and facilitating development of public comments on this proposed rule.

The NRC will publish a notice of the location, time, and agenda of the meeting in the **Federal Register**, on [Regulations.gov](https://www.regulations.gov), and on the NRC’s public meeting website at least 10 calendar days before the meeting. Stakeholders should monitor the NRC’s public meeting website for information about the public meeting at: <https://www.nrc.gov/public-involve/public-meetings/index.cfm>.

XVIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./web link/ Federal Register citation
Proposed Rule Documents	
Draft Regulatory Analysis	ML22019A132.
Draft Environmental Assessment and FONSI	ML22019A140.
Draft Information Collection Analysis	ML18039A192.

Document	ADAMS accession No./web link/ Federal Register citation
Draft Regulatory Guidance Documents	
Draft Regulatory Guide DG–1346, “Emergency Planning for Decommissioning Nuclear Power Reactors”.	ML21347A046.
Draft Regulatory Guide DG–1347, “Decommissioning of Nuclear Power Reactors”	ML21347A080.
Draft Regulatory Guide DG–1348, “Assuring the Availability of Funds for Decommissioning Production or Utilization Facilities”.	ML21347A081.
Draft Regulatory Guide DG–1349, “Standard Format and Content for Post-Shutdown Decommissioning Activities Report”.	ML21347A138.
Other References	
“Bellefonte Nuclear Plant, Units 1 and 2—Withdrawal of Construction Permit Nos. CPPR–122 for Unit 1 and CPPR–123 for Unit 2,” dated September 14, 2006.	ML061810505.
“Energy Northwest Nuclear Project No. 1—Termination of Construction Permit CPPR–134,” dated February 8, 2007.	ML070220011.
“Power Reactor Transition from Operations to Decommissioning: Lessons Learned Report,” dated October 31, 2016.	ML16085A029.
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Federal Register notice—Advance Notice of Proposed Rulemaking, “Regulatory Improvements for Decommissioning Power Reactors,” dated November 19, 2015.	80 FR 72358.
Federal Register notice—Direct Final Rule, “Definition of a Utilization Facility,” dated October 17, 2014	79 FR 62329.
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Federal Register notice—Draft Regulatory Basis, “Regulatory Improvements for Power Reactors Transitioning to Decommissioning,” dated March 15, 2017.	82 FR 13778.
Federal Register notice—Final ITAAC Hearing Procedures, “Final Procedures for Conducting Hearings on Conformance With the Acceptance Criteria in Combined Licenses,” dated July 1, 2016.	81 FR 43266.
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Document	ADAMS accession No./web link/ Federal Register citation
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NSIR/DPR–ISG–02, “Interim Staff Guidance: Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants,” dated May 11, 2015.	ML14106A057.
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Document	ADAMS accession No./web link/ Federal Register citation
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SRM-SECY-99-168, "Staff Requirements—SECY-99-168—Improving Decommissioning Regulations for Nuclear Power Plants," dated December 21, 1999.	ML003752190.
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SRM-SECY-14-0118, "Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements," dated October 29, 2014.	ML14364A111.
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Technical Evaluation for the Endorsement of NEI 99-01, Revision 6, dated March 28, 2013	ML12346A463.
Transmittal of Reports to Inform Decommissioning Plant Rulemaking for User Need Request NSIR-2015-001, dated May 31, 2016.	ML16110A416.
V.C. Summer, Units 2 and 3—Request for Withdrawal of COLs, dated December 27, 2017	ML17361A088.

Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2015-0070.

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalties, Hazardous waste, Licensed material, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers,

Penalties, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 26

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power plants and reactors, Privacy, Protection of information, Radiation protection,

Reporting and recordkeeping requirements.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Issue finality, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 72

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

10 CFR Part 73

Criminal penalties, Exports, Hazardous materials transportation, Imports, Incorporation by reference, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to amend 10 CFR parts 20, 26, 50, 51, 52, 72, 73, and 140 as follows:

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

- 1. The authority citation for part 20 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 53, 63, 65, 81, 103, 104, 161, 170H, 182, 186, 223, 234, 274, 1701 (42 U.S.C. 2014, 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2210h, 2232, 2236, 2273, 2282, 2021, 2297f), Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Low-Level Radioactive Waste Policy Amendments Act of 1985, sec. 2 (42 U.S.C. 2021b); 44 U.S.C. 3504 note.

Appendix G to Part 20 [Amended]

- 2. In appendix G to part 20, amend paragraph E.1. of section III by:
- a. Removing the word “or” and adding in its place the word “of”; and
 - b. Removing the phrase “20 days” and adding in its place the phrase, “45 days”.

PART 26—FITNESS FOR DUTY PROGRAMS

- 3. The authority citation for part 26 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 103, 104, 107, 161, 223, 234, 1701 (42 U.S.C. 2073, 2133, 2134, 2137, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

- 4. Amend § 26.3, by revising paragraph (a) to read as follows:

§ 26.3 Scope.

(a)(1) Each holder of an operating license for a nuclear power reactor under part 50 of this chapter that receives the license after March 31, 2008, and holders of a combined license under part 52 of this chapter after the Commission has made the finding under § 52.103(g) of this chapter must implement the FFD program before the receipt of special nuclear material in the form of fuel assemblies.

(2) Each holder of an operating license for a nuclear power reactor under part 50 of this chapter and each holder of a combined license under part 52 of this chapter for which the Commission has made the finding under § 52.103(g) of this chapter must comply with the requirements of this part, except for subpart K of this part, until the NRC’s docketing of the license holder’s certifications required under § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter.

* * * * *

§ 26.825 [Amended]

- 5. In § 26.825(b), remove “26.3”.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

- 6. Revise the authority citation for part 50 to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 53, 63, 81, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2073, 2093, 2113, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C.

10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

- 7. Revise § 50.1 to read as follows:

§ 50.1 Basis, purpose, and procedures applicable.

The regulations in this part are promulgated by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242), to provide for the licensing of production and utilization facilities through the termination of the associated 10 CFR part 50 licenses. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee’s or applicant’s activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 50.5.

- 8. In § 50.2, revise the definition for *Certified fuel handler* and add a definition for *Non-power production or utilization facility* in alphabetical order to read as follows:

§ 50.2 Definitions.

* * * * *

Certified fuel handler means, for a nuclear power reactor facility, either

- (1) A non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission; or
- (2) A non-licensed operator who meets the following criteria:
- (i) Has qualified in accordance with a fuel handler training program that meets the same requirements as training programs for non-licensed operators required by § 50.120, and
 - (ii) Is responsible for decisions on:

- (A) Safe conduct of decommissioning activities;
- (B) Safe handling and storage of spent fuel; and
- (C) Appropriate response to plant emergencies.

* * * * *

Non-power production or utilization facility means a non-power reactor, testing facility, or other production or utilization facility, licensed under § 50.21(a), § 50.21(c), or § 50.22, that is not a nuclear power reactor or fuel reprocessing plant.

* * * * *

§ 50.36 [Amended]

- 9. In § 50.36(c)(6), add “or § 52.110(a) of this chapter” after “§ 50.82(a)(1)”.
- 10. Revise § 50.38 to read as follows:

§ 50.38 Ineligibility of certain applicants.

(a) Any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license.

(b) The prohibition of paragraph (a) of this section does not apply to a person, corporation, or other entity seeking a license for a facility that meets the criteria of § 50.82(a)(2)(ii), § 50.82(b)(6), or § 52.110(b)(2) of this chapter.

§ 50.44 [Amended]

■ 11. In § 50.44(b) introductory text, add “or § 52.110(a) of this chapter” after “§ 50.82(a)(1)”.

§ 50.46 [Amended]

■ 12. In § 50.46(a)(1)(i), add “or § 52.110(a) of this chapter” after “§ 50.82(a)(1)”.

■ 13. In § 50.47, revise paragraph (b) introductory text and add paragraph (f) to read as follows:

§ 50.47 Emergency plans.

(b) The onsite and, except as provided in paragraphs (d) and (f) of this section, offsite emergency response plans for nuclear power reactors must meet the following standards:

* * * * *

(f) The planning standards of paragraph (b) of this section do not apply to offsite radiological emergency response plans if the licensee’s emergency plan is not required to meet these planning standards or if the plume exposure pathway EPZ does not extend beyond the site boundary.

§ 50.48 [Amended]

■ 14. In § 50.48(f) introductory text, add “or § 52.110(a) of this chapter” after “§ 50.82(a)(1)”.

§ 50.49 [Amended]

■ 15. In § 50.49(a), remove “§ 52.110(a)(1)” and add in its place “§ 52.110(a)”.

§ 50.51 [Amended]

■ 16. In § 50.51, in paragraph (b) introductory text, remove the words “to authorize ownership and possession of the production or utilization facility,”.

■ 17. In § 50.54:

■ a. Amend paragraph (m)(2)(i) by:

■ i. Designating the table;

■ ii. Revising the heading of the newly designated table; and

■ iii. Revising footnote 2 to the table;

■ b. In paragraph (o), remove “52.110(a)(1)” and add in its place “52.110(a)”;

■ c. Redesignate paragraphs (p)(3) and (4) as paragraphs (p)(5) and (6);

■ d. Redesignate paragraphs (p)(1) and (2) as paragraphs (p)(2) and (3) and revise newly redesignated paragraphs (p)(2) and (3);

■ e. Add new paragraph (p) introductory text and paragraphs (p)(1) and (4);

■ f. Revise paragraphs (q)(1) introductory text and (q)(1)(iii) and (q)(2) and (3);

■ g. Remove the words “after February 21, 2012” wherever they appear in paragraphs (q)(4) and (5); and

■ h. Add paragraphs (q)(7) and (8);

■ i. Remove the words “after April 1, 1981,” in paragraph (s)(2)(ii);

■ j. In paragraph (s)(3), remove the words “The NRC” and add in their place the words “If the planning standards for radiological emergency preparedness apply to offsite radiological emergency response plans, the NRC”;

■ k. In paragraph (t)(1)(ii), remove the period from the second sentence and add in its place the word “or.”;

■ l. Add paragraphs (t)(1)(iii) and (t)(3);

■ m. In paragraph (w) introductory text, remove the words “under this part”;

■ n. In paragraphs (w)(4)(ii) and (iii), add the words “or § 52.110 of this chapter” after the words “§ 50.82” wherever they appear;

■ o. Add paragraphs (w)(5) and (6);

■ p. In paragraph (y), add “or § 52.110(a) of this chapter” after “§ 50.82(a)(1)”;

■ q. Revise paragraph (bb).

The revisions and additions read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(m) * * *

(2) * * *

(i) * * *

Table 1 to paragraph (m)(2)(i)—
Minimum Requirements¹ Per Shift for
On-Site Staffing of Nuclear Power Units
by Operators and Senior Operators
Licensed Under 10 CFR part 55

* * * * *

¹ Temporary deviations from the numbers required by this table shall be in accordance with criteria established in the unit’s technical specifications.

² For the purpose of this table, a nuclear power unit is considered to be operating when it is in a mode other than cold shutdown or refueling as defined by the unit’s technical specifications. A Shift Technical Advisor is not required upon the NRC’s docketing of the license holder’s certifications required under § 50.82(a)(1) or § 52.110(a) of this chapter.

* * * * *

(p) *Security plans*—(1) Definitions for the purpose of this paragraph, (p):

(i) *Change* means an action that results in modification of, addition to, or removal from, the licensee’s security plans. All changes are subject to the provisions of this section except where the applicable regulations establish specific criteria for accomplishing a particular change.

(ii) *Decrease in safeguards effectiveness* means a change or series of changes to an element or component of the security plans referenced in paragraph (p)(2) of this section that reduces or eliminates the licensee’s ability to perform or maintain the capabilities set forth in § 73.55(b)(3)(i) of this chapter without compensating changes to other security plan elements or components.

(2) The licensee may not make a change which would decrease the effectiveness of a physical security plan, or guard training and qualification plan, or cyber security plan prepared under § 50.34(c) or § 52.79(a) of this chapter, or part 73 of this chapter, or of the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, Responsibility Matrix) contained in a licensee safeguards contingency plan prepared under § 50.34(d) or § 52.79(a) of this chapter, or part 73 of this chapter, as applicable, without prior approval of the Commission. A licensee desiring to make such a change shall submit an application for amendment to the licensee’s license under § 50.90.

(3) The licensee may make changes to the security plans referenced in paragraph (p)(2) of this section, without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee shall maintain records of changes to the plans made without prior Commission approval for a period of 3 years from the date of the change, and shall submit, as specified in § 50.4 or § 52.3 of this chapter, a report containing a description of each change within 2 months after the change is made. The licensee shall include a summary of the analysis completed to determine that the change does not decrease the safeguards effectiveness of the plan.

(4) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C of part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan. Prior to the safeguards contingency plan being put into effect, the licensee shall have:

(i) All safeguards capabilities specified in the safeguards contingency plan available and functional;

(ii) Detailed procedures developed according to appendix C to part 73 of this chapter available at the licensee's site; and

(iii) All appropriate personnel trained to respond to safeguards incidents as outlined in the plan and specified in the detailed procedures.

* * * * *

(q) *Emergency plans*—(1) Definitions for the purpose of this paragraph (q):

* * * * *

(iii) *Emergency planning function* means a capability or resource necessary to prepare for and respond to a radiological emergency.

* * * * *

(2) Except as provided in paragraph (q)(7) of this section, a holder of a license under this part, or a combined license under part 52 of this chapter after the Commission makes the finding under § 52.103(g) of this chapter, shall follow and maintain the effectiveness of an emergency plan that meets the requirements in appendix E to this part and, for nuclear power reactor licensees, the planning standards of § 50.47(b).

(3) The licensee may make changes to its emergency plan without NRC approval only if the licensee performs and retains an analysis demonstrating that the changes do not reduce the effectiveness of the plan and the plan, as changed, continues to meet the applicable requirements in appendix E to this part and, for nuclear power reactor licensees, the planning standards of § 50.47(b), or the applicable requirements of § 50.200 or § 72.32 of this chapter.

* * * * *

(7) Upon the NRC's docketing of the nuclear power reactor licensee's certifications required under § 50.82(a)(1) or § 52.110(a) of this chapter:

(i) Licensees must follow and maintain the effectiveness of an emergency plan that meets the requirements of § 50.200(a) or paragraph (q)(2) of this section.

(ii) If the fuel assembly with the highest burnup from the final offload that is transferred to the spent fuel pool has a burnup of less than or equal to 72 gigawatt days per metric ton of heavy metal (GWd/MTHM) and has zirconium cladding, then after at least 10 months (for a boiling water reactor) or 16 months (for a pressurized water reactor) have elapsed since the date of permanent cessation of operations, licensees must follow and maintain the effectiveness of an emergency plan that

meets the planning standards of § 50.200(b) and the requirements in § 50.200(c) or paragraph (q)(7)(i) of this section.

(A) In lieu of the 10- or 16-month spent fuel decay period in paragraph (q)(7)(ii) of this section, a licensee may submit under § 50.90 a request for NRC approval of an alternative spent fuel decay period.

(B) If the fuel assembly with the highest burnup transferred to the spent fuel pool at the time of shutdown exceeds a burnup of 72 GWd/MTHM or does not have zirconium cladding, then the licensee must submit under § 50.90 a request for NRC approval of an alternative spent fuel decay period.

(C) In support of the request submitted in paragraph (q)(7)(ii)(A) or (B) of this section, the licensee must include an analysis demonstrating that the alternative spent fuel decay period ensures that the spent fuel would not heat up to 900 °C in less than 10 hours under adiabatic heatup conditions.

(iii) When all the spent fuel is in dry cask storage, licensees must follow and maintain the effectiveness of an emergency plan that meets the standards in § 72.32(a)(1) through (16) of this chapter, or paragraph (q)(7)(ii) of this section.

(iv) Licensees need not comply with the requirements of this section when all spent fuel has been removed from the site.

(8) The following provisions apply to emergency plan changes to be implemented after the NRC's docketing of the nuclear power reactor licensee's certifications required under § 50.82(a)(1) or § 52.110(a) of this chapter:

(i) Initial plan changes made under paragraph (q)(3) of this section to comply with the requirements of § 50.200 or § 72.32(a) of this chapter as permitted by paragraph (q)(7)(i), (ii), or (iii) of this section are not reductions in effectiveness of the plan and do not need to be submitted to the NRC for prior approval. These plan changes must be submitted to the NRC at least 60 days prior to implementation, as specified in § 50.4. Subsequent plan changes must be made under paragraph (q)(3) or (4) of this section, or licensees may follow the change process under § 72.44(f) of this chapter if the emergency plan meets the requirements in § 72.32(a) of this chapter.

(ii) For structures, systems, and components that are no longer needed to provide support for an emergency planning function as defined in paragraph (q)(1)(iii) of this section, licensees may make a determination under paragraph (q)(3) of this section

that changes to the emergency plan related to these structures, systems, and components are not reductions in effectiveness if the Final Safety Analysis Report demonstrates that these structures, systems, and components are no longer required to be in service due to the decommissioning status of the facility.

(iii) Changes to emergency action levels based on plant conditions that are not physically achievable or instrumentation that is no longer in service due to the decommissioning status of the facility, are not reductions in effectiveness provided that the evaluation under paragraph (q)(3) of this section demonstrates that these changes do not reduce the capability of the emergency plan to take timely and appropriate protective actions.

* * * * *

(t) * * *

(1) * * *

(iii) At intervals not to exceed 24 months after the first required element review following transition to an emergency plan that meets the requirements of § 50.200(b).

* * * * *

(3) The review of the emergency preparedness program elements is no longer required once all fuel is in dry cask storage.

* * * * *

(w) * * *

(5) Each power reactor licensee for a production or utilization facility of the type described in § 50.21(b) or § 50.22 shall have and maintain financial protection in an amount of at least \$50,000,000 for each reactor station site:

(i) For which the NRC has docketed the certifications required under § 50.82(a)(1) or § 52.110(a) of this chapter; and

(ii) For which at least 10 months (for a boiling water reactor) or 16 months (for a pressurized water reactor) have elapsed since the date of permanent cessation of operations if the fuel meets the criteria of § 50.54(q)(7)(ii), or for which an NRC-approved alternative to the 10- or 16-month spent fuel decay period, submitted under § 50.54(q)(7)(ii)(A) or (B), has elapsed.

(6) The licensee shall promptly notify the Commission of any material change in the insurance or other financial security information reported to the Commission under paragraph (w)(3) of this section.

* * * * *

(bb) *Irradiated Fuel Management Plan* (1) Prior to or within 2 years following permanent cessation of operations, the licensee must submit an irradiated fuel management plan (IFMP) to the NRC as

an application for an amendment to its license. Licensees may not start to decommission structures, systems, and components needed for moving, unloading, and shipping the irradiated fuel until after the NRC approves the IFMP.

(2) The IFMP must contain a discussion of the licensee's planned actions for managing irradiated fuel and how those actions will be consistent with NRC requirements for licensed possession of irradiated fuel until title to, and possession of, the irradiated fuel is transferred to the Secretary of Energy.

(3) If any planned actions for managing irradiated fuel would require exemptions from applicable regulations or amendments to the licensee's license issued under this part or part 52 or 72 of this chapter or the certificate of compliance issued under part 72 of this chapter being used by the licensee, then the licensee shall identify them in the IFMP and state that these requests have been or will be made to the NRC.

(4) The IFMP must contain the projected cost of managing irradiated fuel and discuss how the licensee will provide funding for the management of the irradiated fuel following permanent cessation of operations until title to, and possession of, the irradiated fuel is transferred to the Secretary of Energy.

(5) Licensees shall submit to the NRC any changes to the IFMP as an application for an amendment to its license.

(6) The licensee shall retain a copy of the IFMP as a record until termination of the operating license issued under this part or combined license issued under part 52 of this chapter.

* * * * *

■ 18. In § 50.59:

■ a. In paragraph (b), remove “§ 50.110” and add in its place “§ 52.110(a) of this chapter”; and

■ b. Revise paragraph (d)(3) to read as follows:

§ 50.59 Changes, tests and experiments.

* * * * *

(d) * * *

(3) Except as specified in § 50.71(c)(2), the records of changes in the facility must be maintained until the termination of an operating license issued under this part, a combined license issued under part 52 of this chapter, or a renewed license issued under part 54 of this chapter. Records of changes in procedures and records of tests and experiments must be maintained for a period of 5 years.

§ 50.60 [Amended]

■ 19. In § 50.60(a), add “or § 52.110(a) of this chapter” after “§ 50.82(a)(1)”.

§ 50.61 [Amended]

■ 20. In § 50.61(b)(1), add “or § 52.110(a) of this chapter” after “§ 50.82(a)(1)”.

§ 50.62 [Amended]

■ 21. In § 50.62(a), add “or § 52.110(a) of this chapter” after “§ 50.82(a)(1)”.

§ 50.65 [Amended]

■ 22. In § 50.65(a)(1), remove “52.110(a)(1)” and add in its place “52.110(a)”.

■ 23. In § 50.71, revise paragraphs (c) and (e)(4) to read as follows:

§ 50.71 Maintenance of records, making of reports.

* * * * *

(c)(1) Records that are required by the regulations in this part or part 52 of this chapter, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license, except as specified in paragraph (c)(2) of this section, or, in the case of an early site permit, until the permit expires.

(2) Licensees for which the NRC has docketed the certifications required under § 50.82(a)(1) or § 52.110(a) of this chapter are not required to retain records associated with structures, systems, and components that have been permanently removed from service under the NRC license using an NRC-approved change process. Licensees shall continue to retain records as specified under § 50.75(g).

* * * * *

(e) * * *

(4) Subsequent revisions must be filed annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months. The revisions must reflect all changes up to a maximum of 6 months prior to the date of filing. For nuclear power reactor facilities that have submitted the certifications required by § 50.82(a)(1) or § 52.110(a), subsequent revisions must be filed every 24 months.

* * * * *

■ 24. In § 50.75:

■ a. Revise the first sentence in paragraph (a);

■ b. Revise paragraphs (b)(1), (3), and (4) and add paragraph (b)(5);

■ c. Revise paragraph (e)(1) introductory text;

■ d. In paragraph (e)(1)(i):

■ i. Remove the phrase “formulas in § 50.75(c)” and add in its place the

phrase “table of minimum amounts in paragraph (c)”;

■ ii. Remove the phrase “site-specific estimate” wherever it appears and add in its place the phrase “site-specific decommissioning cost estimate”;

■ e. In paragraph (e)(1)(ii) introductory text, remove the phrase “site-specific estimate” wherever it appears and add in its place the phrase “site-specific decommissioning cost estimate”;

■ f. In paragraph (e)(1)(ii)(B), add “or § 52.110 of this chapter” after “50.82 of this part”;

■ g. In paragraph (e)(1)(v), add “or § 52.110 of this chapter” after “or § 50.82”;

■ h. Amend paragraph (f) by:

■ i. Revising paragraph (f)(1);

■ ii. Removing paragraph (f)(2);

■ iii. Redesignating paragraphs (f)(3)

through (5) as (f)(2) through (4); and

■ iv. Revising newly redesignated paragraph (f)(2) and paragraph (f)(3) introductory text;

■ i. In paragraphs (h)(1)(iii) and (iv), remove the words “Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable,” wherever they appear in the first sentence of each paragraph and add in their place the words, “Document Control Desk as specified in § 50.4”.

■ j. In paragraph (h)(1)(iv), add “or § 52.110(h) of this chapter” after “§ 50.82(a)(8)” wherever it appears.

■ k. In paragraph (h)(2), remove the words “given the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable,” wherever they appear and add in their place, the words, “given to the Document Control Desk as specified in § 50.4”.

■ l. In paragraph (h)(2), add “or § 52.110(h) of this chapter” after “§ 50.82(a)(8)” wherever it appears.

The revisions and addition read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

(a) This section establishes requirements for indicating to NRC how a licensee will provide reasonable assurance that funds will be available to decommission the facility, as defined in § 50.2. * * *

* * * * *

(b) * * *

(1) For an applicant for or holder of an operating license under this part, the report must contain a certification that reasonable assurance that funds will be available to decommission will be (for a license applicant), or has been (for a license holder), provided in an amount which may be more, but not less, than

the amount stated in the table of minimum amounts in paragraph (c)(1) of this section, adjusted using a rate at least equal to that stated in paragraph (c)(2) of this section. For an applicant for a combined license under subpart C of part 52 of this chapter, the report must contain a certification that reasonable assurance of funds to decommission will be provided no later than 30 days after the Commission publishes notice in the **Federal Register** under § 52.103(a) of this chapter in an amount which may be more, but not less, than the amount stated in the table of minimum amounts in paragraph (c)(1) of this section, adjusted using a rate at least equal to that stated in paragraph (c)(2) of this section.

* * * * *

(3) The amount must be covered by one or more of the methods described in paragraph (e) of this section.

(4) The amount stated in the applicant's or licensee's certification may be based on a site-specific decommissioning cost estimate for decommissioning the facility. The site-specific decommissioning cost estimate may be more, but not less, than the amount stated in the table of minimum amounts in paragraph (c)(1) of this section, adjusted using a rate at least equal to that stated in paragraph (c)(2) of this section.

(5) As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC; provided, however, that an applicant for or holder of a combined license need not obtain such financial instrument or submit a copy to the Commission except as provided in paragraph (e)(3) of this section.

* * * * *

(e)(1) Reasonable assurance of funds to decommission is to be provided by the following methods:

* * * * *

(f)(1) Each power reactor licensee shall report, on a calendar-year basis, to the NRC by March 31, 2023, and at least once every 3 years thereafter on the status of its decommissioning funding provided by the financial assurance methods described in paragraph (e)(1) of this section for each reactor or part of a reactor that it owns. However, each holder of a combined license under part 52 of this chapter need not begin reporting until the date that the Commission has made the finding under § 52.103(g) of this chapter. The information in this report must include, at a minimum, the amount of decommissioning funds estimated to be required pursuant to paragraphs (b) and

(c) of this section; the amount of decommissioning funds accumulated to the end of the calendar year preceding the date of the report; a schedule of the annual amounts remaining to be collected; the assumptions used regarding rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections; any contracts upon which the licensee is relying pursuant to paragraph (e)(1)(v) of this section; any modifications occurring to a licensee's current method of providing financial assurance since the last submitted report; and any material changes to trust agreements. If any of the preceding items is not applicable, the licensee should so state in its report. If the projected balance of any decommissioning funds does not cover the estimated cost of decommissioning, the licensee must include additional financial assurance to cover the shortfall by the time the next report is due. Once a licensee has determined that it is within 5 years of permanent cessation of operations, or if it is involved in a merger or an acquisition, it shall submit this report annually. Once the plant has permanently ceased operations, the reporting requirements of § 50.82(a)(8)(v) (for 10 CFR part 50 licensees) or § 52.110(h)(5) of this chapter (for 10 CFR part 52 licensees) shall apply.

(2) Each power reactor licensee shall at or about 5 years prior to the projected end of operations submit a preliminary site-specific decommissioning cost estimate which includes an up-to-date assessment of the major factors that could affect the cost to decommission.

(3) Each non-power reactor licensee shall at or about 2 years prior to the projected end of operations submit a preliminary decommissioning plan containing a site-specific decommissioning cost estimate and an up-to-date assessment of the major factors that could affect planning for decommissioning. Factors to be considered in submitting this preliminary decommissioning plan information include—

* * * * *

- 25. In § 50.82:
 - a. Revise paragraphs (a)(2), (a)(4), (a)(6)(ii), (a)(8)(i)(A), (a)(8)(ii), (a)(8)(v) introductory text and (a)(8)(vii) introductory text;
 - b. Revise paragraphs (a)(9) introductory text and (a)(9)(ii)(F);
 - c. Revise paragraph (b) introductory text; and
 - d. Redesignate paragraph (b)(6) as (b)(8) and add new paragraphs (b)(6) and (7).

The revisions and additions read as follows:

§ 50.82 Termination of license.

* * * * *

(a) * * *

(2)(i) Upon the NRC's docketing of the licensee's certifications required under paragraph (a)(1) of this section, or when a final legally effective order to permanently cease operations has come into effect, the 10 CFR part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.

(ii) The facility licensed under this part is no longer a utilization facility once the licensee meets the criteria of paragraph (a)(2)(i) of this section and modifies the facility to be incapable of making use of special nuclear material without significant facility alterations necessary to restore the capability to make use of special nuclear material. The NRC maintains the authority to regulate the 10 CFR part 50 license with respect to the possession of special nuclear material, source material, and byproduct material under sections 53, 63, 81, and 161 of the Act, as applicable. Until the termination of the 10 CFR part 50 license under paragraph (a)(11) of this section, the regulations of this chapter applicable to a utilization facility continue to apply to the holder of the license unless the regulations explicitly state otherwise.

* * * * *

(4)(i) Prior to or within 2 years following permanent cessation of operations, the licensee shall submit a post-shutdown decommissioning activities report (PSDAR) to the NRC, and a copy to the affected State(s). The PSDAR must contain a description of the planned decommissioning activities along with a schedule for their accomplishment, a discussion whether the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate federally issued environmental review documents, a description of any decommissioning activities whose environmental impacts will not be so bounded and will be evaluated prior to the performance of the activities, and a site-specific decommissioning cost estimate, including the projected cost of managing irradiated fuel.

(ii) The NRC shall publish a notice in the **Federal Register** acknowledging the receipt of the PSDAR and the availability for public comment of the PSDAR. The NRC shall also schedule a public meeting in the vicinity of the licensee's facility upon receipt of the PSDAR. The NRC shall include a notice

in a forum, such as local newspapers, that is readily accessible to individuals in the vicinity of the site, and in the **Federal Register** notice required by this paragraph, announcing the date, time and location of the meeting, along with a brief description of the purpose of the meeting.

* * * * *

(6) * * *

(ii) Result in significant environmental impacts not bounded by appropriate federally issued environmental review documents; or

* * * * *

(8) * * *

(i) * * *

(A) The withdrawals are for expenses for activities consistent with the definition of *decommission* in § 50.2;

* * * * *

(ii) Initially, 3 percent of the generic amount specified in § 50.75(c) may be used for decommissioning planning. For licensees that have submitted the certifications required under § 50.82(a)(1) and commencing 90 days after the NRC has received the PSDAR, an additional 20 percent may be used. A site-specific decommissioning cost estimate must be submitted to the NRC prior to the licensee using any funding in excess of these amounts.

* * * * *

(v) After submitting its site-specific decommissioning cost estimate required by paragraph (a)(4)(i) of this section, and until the licensee has completed its final radiation survey and demonstrated that residual radioactivity has been reduced to a level that permits termination of its license, the licensee must annually submit to the NRC, by March 31, a financial assurance status report. The report may combine the reporting requirements of § 72.30 of this chapter and § 50.82(a)(8)(vii). The report must include the following information, current through the end of the previous calendar year:

* * * * *

(vii) After submitting its site-specific decommissioning cost estimate required by paragraph (a)(4)(i) of this section, if spent fuel is on site, the licensee must annually submit to the NRC, by March 31, a report on the status of its funding for managing irradiated fuel. The report must include the following information, current through the end of the previous calendar year:

* * * * *

(9) All power reactor licensees that have loaded fuel into the reactor must submit an application for termination of license. The application for termination of license must be accompanied or

preceded by a license termination plan to be submitted for NRC approval.

* * * * *

(ii) * * *

(F) An updated site-specific estimate of remaining decommissioning costs and identification of sources of funds for license termination, spent fuel management, and ISFSI decommissioning, as applicable;

* * * * *

(b) For non-power production or utilization facilities and fuel reprocessing plants—

* * * * *

(6) The facility licensed under this part is no longer a production or utilization facility once the following criteria are met:

(i) The NRC removes the licensee's authority to operate the facility through a license amendment; and

(ii) The licensee modifies the facility to be incapable of the production of special nuclear material, separation of the isotopes of plutonium, processing of irradiated materials containing special nuclear material, or making use of special nuclear material, without significant facility alterations necessary to restore the capability to produce special nuclear material, separate the isotopes of plutonium, process irradiated materials containing special nuclear material, or make use of special nuclear material.

(7) For a facility licensed under this part that is no longer a production or utilization facility under paragraph (b)(6) of this section, the NRC maintains the authority to regulate the 10 CFR part 50 license with respect to the possession of special nuclear material, source material, and byproduct material under sections 53, 63, 81, and 161 of the Act, as applicable. Until the termination of the 10 CFR part 50 license under paragraph (b)(8) of this section, the regulations of this chapter applicable to a non-power production or utilization facility or fuel reprocessing plant continue to apply to the holder of the license unless the regulations explicitly state otherwise.

* * * * *

■ 26. Revise § 50.109 to read as follows:

§ 50.109 Backfitting.

(a) *Backfitting for nuclear power reactor licensees prior to decommissioning.* (1)(i) *Definition.* Backfitting is defined as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility;

any of which may result from a new or amended provision in the Commission's regulations or the imposition of a regulatory staff position interpreting the Commission's regulations that is either new or different from a previously applicable staff position after:

(A) The date of issuance of the construction permit for the facility for facilities having construction permits issued after October 21, 1985;

(B) Six (6) months before the date of docketing of the operating license application for the facility for facilities having construction permits issued before October 21, 1985;

(C) The date of issuance of the operating license for the facility for facilities having operating licenses;

(D) The date of issuance of the design approval under subpart E of part 52 of this chapter;

(E) The date of issuance of a manufacturing license under subpart F of part 52 of this chapter;

(F) The date of issuance of the first construction permit issued for a duplicate design under appendix N to this part; or

(G) The date of issuance of a combined license under subpart C of part 52 of this chapter, provided that if the combined license references an early site permit, the provisions in § 52.39 of this chapter apply with respect to the site characteristics, design parameters, and terms and conditions specified in the early site permit. If the combined license references a standard design certification rule under subpart B of 10 CFR part 52, the provisions in § 52.63 of this chapter apply with respect to the design matters resolved in the standard design certification rule, provided however, that if any specific backfitting limitations are included in a referenced design certification rule, those limitations shall govern. If the combined license references a standard design approval under subpart E of 10 CFR part 52, the provisions in § 52.145 of this chapter apply with respect to the design matters resolved in the standard design approval. If the combined license uses a reactor manufactured under a manufacturing license under subpart F of 10 CFR part 52, the provisions of § 52.171 of this chapter apply with respect to matters resolved in the manufacturing license proceeding.

(ii) *Proposed backfitting.* Except as provided in paragraph (a)(1)(iv) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (a)(2) of this section for backfits which it seeks to impose.

(iii) *Backfit analysis.* Except as provided in paragraph (a)(1)(iv) of this

section, the Commission shall require the backfitting of a facility only when it determines, based on the analysis described in paragraph (a)(2) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection.

(iv) *Exceptions.* The provisions of paragraphs (a)(1)(ii) and (iii) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (a)(1)(iii) of this section do not apply where the Commission or staff, as appropriate, finds and declares, with appropriated documented evaluation for its finding, either:

(A) That a modification is necessary to bring a facility into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by the licensee; or

(B) That regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; or

(C) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

(v) *Mandatory backfitting.* The Commission shall always require the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security.

(vi) *Documented evaluation.* The documented evaluation required by paragraph (a)(1)(iv) of this section shall include a statement of the objectives of and reasons for the modification and the basis for invoking the exception. If immediately effective regulatory action is required, then the documented evaluation may follow rather than precede the regulatory action. The documented evaluation required by paragraph (a)(1)(iv)(A) of this section must include a consideration of the costs of imposing the modification.

(vii) *Implementation.* If there are two or more ways to achieve compliance with a license or the rules or orders of the Commission, or with written licensee commitments, or there are two or more ways to reach a level of protection which is adequate, then ordinarily the applicant or licensee is free to choose the way which best suits

its purposes. However, should it be necessary or appropriate for the Commission to prescribe a specific way to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

(2) *Backfit analysis factors.* In reaching the determination required by paragraph (a)(1)(iii) of this section, the Commission will consider how the backfit should be scheduled in light of other ongoing regulatory activities at the facility and, in addition, will consider information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed backfit:

(i) Statement of the specific objectives that the proposed backfit is designed to achieve;

(ii) General description of the activity that would be required by the licensee or applicant in order to complete the backfit;

(iii) Potential change in the risk to the public from the accidental off-site release of radioactive material;

(iv) Potential impact on radiological exposure of facility employees;

(v) Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay;

(vi) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements;

(vii) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(viii) The potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit;

(ix) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(3) *Impact on licensing actions.* No licensing action will be withheld during the pendency of backfit analyses required by the Commission's rules.

(b) *Backfitting for decommissioning nuclear power reactor licensees.*

(1) *Definition.* Backfitting is defined as the modification of or addition to systems, structures, or components in use after permanent cessation of operations and certification of permanent removal of fuel from the reactor vessel has been docketed as required under § 50.82(a)(1) or § 52.110(a) of this chapter, or the design

of the licensee's facility, or the procedures or organization required to decommission the facility, any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position, after the date of issuance of the operating license issued under this part or combined license issued under subpart C of part 52 of this chapter.

(2) *Proposed backfits.* Except as provided in paragraph (b)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (b)(8) of this section for backfits that it seeks to impose.

(3) *Backfit analysis.* Except as provided in paragraph (b)(4) of this section, the Commission shall require the backfitting of a facility only when it determines, based on the analysis described in paragraph (b)(8) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection.

(4) *Exceptions.* The provisions of paragraphs (b)(2) and (3) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (b)(3) of this section do not apply where the Commission or staff, as appropriate, finds and declares, with appropriated documented evaluation for its finding, either:

(i) That a modification is necessary to bring a facility into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by the licensee;

(ii) That regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; or

(iii) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

(5) *Mandatory backfitting.* The Commission shall always require the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security.

(6) *Documented evaluation.* The documented evaluation required by paragraph (b)(4) of this section shall include a statement of the objectives of and reasons for the modification and the basis for invoking the exception. If immediately effective regulatory action is required, then the documented evaluation may follow rather than precede the regulatory action. The documented evaluation required by paragraph (b)(4)(i) of this section must include a consideration of the costs of imposing the modification.

(7) *Implementation.* If there are two or more ways to achieve compliance with a license or the rules or orders of the Commission, or with written licensee commitments, or there are two or more ways to reach a level of protection that is adequate, then ordinarily the licensee is free to choose the way that best suits its purposes. However, should it be necessary or appropriate for the Commission to prescribe a specific way to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

(8) *Backfit analysis factors.* In reaching the determination required by paragraph (b)(3) of this section, the Commission will consider how the backfit should be scheduled in light of other ongoing regulatory activities at the facility and, in addition, will consider information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed backfit:

(i) Statement of the specific objectives that the proposed backfit is designed to achieve;

(ii) General description of the activity that would be required by the licensee in order to complete the backfit;

(iii) Potential change in the risk to the public from the accidental off-site release of radioactive material;

(iv) Potential impact on radiological exposure of facility employees;

(v) Installation and continuing costs associated with the backfit, including the cost of decommissioning delay;

(vi) The potential safety impact of changes in major decommissioning activities, including the relationship to proposed and existing regulatory requirements;

(vii) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(viii) The potential impact of differences in facility type and the percentage of decommissioning

completed on the relevancy and practicality of the proposed backfit; and

(ix) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(9) *Impact on licensing actions.* No licensing action will be withheld during the pendency of backfit analyses required by the Commission's rules.

(c) *Responsibility for implementation.* The Executive Director for Operations shall be responsible for implementation of this section, and all analyses required by this section shall be approved by the Executive Director for Operations or his designee.

■ 27. In § 50.155, add paragraphs (h)(6), (7), and (8) to read as follows:

§ 50.155 Mitigation of beyond-design-basis events.

* * * * *

(h) * * *

(6) On [EFFECTIVE DATE OF THE FINAL RULE], Order EA-06-137, "Order Modifying Licenses," is rescinded for each licensee that was issued Order EA-06-137.

(7) On [EFFECTIVE DATE OF THE FINAL RULE], the Mitigation Strategies License Condition is deemed removed from the power reactor license of each licensee subject to this section.

(8) On [EFFECTIVE DATE OF THE FINAL RULE], the license condition associated with Order EA-06-137 is deemed removed from the power reactor license of each applicable licensee subject to this section.

* * * * *

■ 28. Add § 50.200 to read as follows:

§ 50.200 Power reactor decommissioning emergency plans.

(a) *Post-shutdown emergency plans (PSEP).* If the licensee elects in § 50.54(q)(7)(i) to comply with this section, then the licensee's onsite emergency response plans must meet the planning standards of § 50.47(b) and the requirements in appendix E to this part. For a PSEP, emergency response organization (ERO) staffing required by § 50.47(b)(2) and appendix E to this part may be commensurate with a reduced spectrum of credible accidents for a permanently shutdown and defueled power reactor facility.

(b) *Permanently defueled emergency plans (PDEP).* If the licensee elects in § 50.54(q)(7)(ii) to comply with this section, then the licensee's onsite emergency response plans must meet the requirements in paragraph (c) of this section and the following planning standards:

(1) Primary responsibilities for emergency response by the nuclear

facility licensee and by State and local organizations have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established, and each principal response organization has staff to respond and to augment its initial response on a continuous basis.

(2) On-shift facility licensee responsibilities for emergency response are unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, timely augmentation of response capabilities is available, and the interfaces among various onsite response activities and offsite support and response activities are specified.

(3) Arrangements for requesting and effectively using assistance resources have been made, and other organizations capable of augmenting the planned response have been identified.

(4) A standard emergency classification and action level scheme, the bases of which include facility system and effluent parameters, is in use by the nuclear facility licensee.

(5) Procedures have been established for notification, by the licensee, of State and local response organizations and for notification of emergency personnel by all organizations; the content of initial and followup messages to response organizations has been established.

(6) Provisions exist for prompt communications among principal response organizations to emergency personnel.

(7) The principal points of contact with the news media for dissemination of information during an emergency are established in advance, and procedures for coordinated dissemination of information to the public are established.

(8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained.

(9) Adequate methods, systems, and equipment for assessing and monitoring actual or potential consequences of a radiological emergency condition are in use.

(10) A range of protective actions has been developed for emergency workers and the public.

(11) Means for controlling radiological exposures in an emergency are established for emergency workers.

(12) Arrangements are made for medical services for contaminated injured individuals.

(13) General plans for recovery and reentry are developed.

(14) Periodic exercises will be conducted to evaluate major portions of emergency response capabilities,

periodic drills will be conducted to develop and maintain key skills, and deficiencies identified as a result of exercises or drills will be corrected.

(15) Radiological emergency response training is provided to those who may be called on to assist in an emergency.

(16) Responsibilities for plan development and review and for distribution of emergency plans are established, and planners are properly trained.

(c) *Content of emergency plans.* (1) Emergency plans must contain, but not necessarily be limited to, information needed to demonstrate compliance with the elements set forth in this paragraph, *i.e.*, organization for coping with radiological emergencies, assessment actions, activation of emergency organization, notification procedures, emergency facilities and equipment, training, maintaining emergency preparedness, and recovery.

(i) *Organization.* (A) The organization for coping with radiological emergencies must be described, including definition of authorities, responsibilities, and duties of individuals assigned to the licensee's emergency organization and the means for notification of such individuals in the event of an emergency. Specifically, the following must be included:

(1) A description of the normal plant organization.

(2) A description of the onsite ERO with a detailed discussion of:

(i) Authorities, responsibilities, and duties of the individual(s) who will take charge during an emergency;

(ii) Plant staff emergency assignments;

(iii) Authorities, responsibilities, and duties of an onsite emergency coordinator who shall be in charge of the exchange of information with offsite authorities responsible for coordinating and implementing offsite emergency measures.

(3) Identification, by position and function to be performed, of persons within the licensee organization who will be responsible for making dose projections, and a description of how these projections will be made and the results transmitted to State and local authorities, NRC, and other appropriate governmental entities.

(4) A description of the local offsite services to be provided in support of the licensee's emergency organization.

(5) Identification of assistance expected from appropriate State, local, and Federal agencies with responsibilities for coping with emergencies, including an act directed toward a nuclear power plant or its personnel that includes the use of violent force to destroy equipment, take

hostages, and/or intimidate the licensee to achieve an end. This includes attack by air, land, or water using guns, explosives, projectiles, vehicles, or other devices used to deliver destructive force.

(B) [Reserved]

(ii) *Assessment actions.* (A) The means to be used for determining the magnitude of, and for continually assessing the impact of, the release of radioactive materials must be described, including emergency action levels that are to be used as criteria for determining the need for notification and participation of local and State agencies, the Commission, and other Federal agencies, and the emergency action levels that are to be used for determining when and what type of protective measures should be considered within the site boundary to protect health and safety. The emergency action levels must be based on in-plant conditions and instrumentation in addition to onsite monitoring. Emergency action levels must be reviewed with the State and local governmental authorities on an annual basis.

(B) A licensee desiring to change its entire emergency action level scheme must submit an application for an amendment to its license and receive NRC approval before implementing the change. Licensees must follow the change process in § 50.54(q) for all other emergency action level changes.

(iii) *Activation of emergency organization.* (A) The entire spectrum of emergency conditions that involve the alerting or activating of progressively larger segments of the total emergency organization must be described. The communication steps to be taken to alert or activate emergency personnel under each class of emergency must be described. Emergency action levels, based not only on onsite radiation monitoring information but also on readings from a number of sensors that indicate a potential emergency for notification of offsite agencies, must be described. The existence, but not the details, of a message authentication scheme must be noted for such agencies. The emergency classes defined must include:

(1) Notification of unusual events; and

(2) Alert.

(B) Licensees must establish and maintain the capability to assess, classify, and declare an emergency condition as soon as possible and within 60 minutes after the availability of indications to plant operators that an emergency action level has been exceeded and must promptly declare the emergency condition as soon as

possible following identification of the appropriate emergency classification level. Licensees must not construe these criteria as a grace period to attempt to restore plant conditions to avoid declaring an emergency action due to an emergency action level that has been exceeded. Licensees must not construe these criteria as preventing implementation of response actions deemed by the licensee to be necessary to protect public health and safety provided that any delay in declaration does not deny the State and local authorities the opportunity to implement measures necessary to protect the public health and safety.

(iv) *Notification procedures.* (A) Administrative and physical means for notifying local, State, and Federal officials and agencies must be described. This description must include identification of the State and local government agencies.

(B) A licensee must have the capability to notify responsible State and local governmental agencies as soon as possible and within 60 minutes after declaring an emergency.

(v) *Emergency facilities and equipment.* Adequate provisions must be made and described for emergency facilities and equipment, including:

(A) Equipment at the site for personnel monitoring;

(B) Equipment for determining the magnitude of and for continuously assessing the impact of the release of radioactive materials to the environment;

(C) Facilities and supplies at the site for decontamination of onsite individuals;

(D) Facilities and medical supplies at the site for appropriate emergency first aid treatment;

(E) Arrangements for medical service providers qualified to handle radiological emergencies onsite;

(F) Arrangements for transportation of contaminated injured individuals from the site to specifically identified treatment facilities outside the site boundary;

(G) Arrangements for treatment of individuals injured in support of licensed activities on the site at treatment facilities outside the site boundary;

(H) A licensee facility from which effective direction can be given and effective control can be exercised during an emergency;

(I) At least one onsite and one offsite communications system; each system must have a backup power source. All communication plans must have arrangements for emergencies, including titles and alternates for those in charge

at both ends of the communication links and the primary and backup means of communication. Where consistent with the function of the governmental agency, these arrangements will include:

(1) Provision for communications with contiguous State and local governments. Such communications must be tested monthly.

(2) Provision for communications with Federal emergency response organizations. Such communications systems must be tested annually.

(3) Provisions for communications by the licensee with NRC Headquarters and the appropriate NRC Regional Office Operations Center from the facility. Such communications must be tested monthly.

(vi) *Training.* (A) The training program must provide for:

(1) The training of employees and exercising, by periodic drills, of emergency plans to ensure that employees of the licensee are familiar with their specific emergency response duties, and

(2) The participation in the training and drills by other persons whose assistance may be needed in the event of a radiological emergency. The plan must include a description of specialized initial training and periodic retraining programs to be provided to each of the following categories of emergency personnel:

(i) Directors and/or coordinators of the plant emergency organization;

(ii) Personnel responsible for accident assessment;

(iii) Radiological monitoring teams;

(iv) Fire control teams (fire brigades);

(v) Repair and damage control teams;

(vi) First aid and rescue teams;

(vii) Medical support personnel; and

(viii) Security personnel.

(3) In addition, a radiological orientation training program must be made available to local services personnel, such as local emergency services and local law enforcement personnel.

(B) The plan must describe provisions for the conduct of emergency preparedness exercises as follows: Exercises must test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communications networks, and ensure that emergency organization personnel are familiar with their duties.¹

(1) Within two years of the last exercise of the onsite emergency plan performed under section IV.F.2.b of

¹ Use of site-specific simulators or computers is acceptable for any exercise.

appendix E to this part, each licensee must conduct an exercise of its onsite emergency plan.

(2) Each licensee at each site must conduct a subsequent exercise of its onsite emergency plan every 2 years. In addition, the licensee must take actions necessary to ensure that adequate emergency response capabilities are maintained during the interval between biennial exercises by conducting drills, including at least one drill involving a combination of some of the principal functional areas of the licensee's onsite emergency response capabilities. The principal functional areas of emergency response include activities such as management and coordination of emergency response, accident assessment, event classification, notification of offsite authorities, assessment of the onsite impact of radiological releases, system repair, and mitigative action implementation. During these drills, activation of all of the licensee's emergency response facilities is not necessary, licensees have the opportunity to consider accident management strategies, supervised instruction is permitted, operating staff in all participating facilities have the opportunity to resolve problems (success paths) rather than have controllers intervene, and the drills may focus on the onsite exercise training objectives.

(3) Each licensee shall enable any State or local government to participate in the licensee's drills and exercises when requested by such State or local government.

(4) Remedial exercises will be required if the emergency plan is not satisfactorily tested during the biennial exercise, such that NRC cannot:

(i) Find reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; or

(ii) Determine that the ERO has maintained key skills specific to emergency response.

(5) All exercises, drills, and training that provide performance opportunities to develop, maintain, or demonstrate key skills must provide for formal critiques in order to identify weak or deficient areas that need correction. Any weaknesses or deficiencies that are identified in a critique of exercises, drills, or training must be corrected.

(6) Each licensee shall use drill and exercise scenarios that provide reasonable assurance that anticipatory responses will not result from preconditioning of participants. Exercise and drill scenarios that appropriate must emphasize

coordination among onsite and offsite response organizations.

(vii) *Maintaining emergency preparedness.* (A) Provisions to be employed to ensure that the emergency plan, its implementing procedures, and emergency equipment and supplies are maintained up to date must be described.

(B) [Reserved]

(viii) *Recovery.* (A) Criteria to be used to determine when, following an accident, reentry of the facility would be appropriate must be described.

(B) [Reserved]

(2) [Reserved]

- * * * * *
- 29. Amend appendix E to part 50 by:
 - a. Removing paragraph I.6;
 - b. In paragraph IV.4, removing the words “of the later of the date” and “or December 23, 2011,”;
 - c. Adding paragraph IV.8;
 - d. In paragraph IV.A.7, removing the words, “By June 23, 2014, identification” and adding in their place the word, “Identification”;
 - e. In paragraph IV.A.9, removing the words, “By December 24, 2012, for” and adding in their place the word, “For”;
 - f. In paragraph IV.B.1, removing the words, “By June 20, 2012, for” and adding in their place the word, “For”;
 - g. In paragraph IV.C.2, removing the words, “By June 20, 2012, nuclear” and adding in their place the word, “Nuclear”;
 - h. In paragraph IV.E.8.c introductory text, removing the words, “By June 20, 2012, for” and adding in their place the word, “For”;
 - i. In paragraph IV.E.8.d, removing the last sentence;
 - j. In paragraph IV.F.2.d removing the words “and should fully participate in one hostile action exercise by December 31, 2015”;
 - k. Removing and reserving paragraph IV.F.2.j(v);
 - l. Adding paragraph IV.F.2.k;
 - m. In paragraph IV.I, removing the words, “By June 20, 2012, for” and adding in their place the word, “For”;
- The revisions and addition read as follows:

Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

IV. * * *

8. A nuclear power reactor licensee is not subject to the requirements of paragraphs 4, 5, and 6 of this section once the NRC docket the licensee's certifications required under § 50.82(a)(1) or § 52.110(a) of this chapter.

* * * * *

F. * * *

2. * * *

k. For each nuclear reactor for which the NRC has docketed the certifications required under § 50.82(a)(1) or § 52.110(a) of this chapter, the nuclear reactor's licensee must follow the biennial exercise requirements of paragraph 2 of this section.

* * * * *

Appendix I to Part 50 [Amended]

■ 30. In section IV.C, add “or § 52.110(a) of this chapter” after “§ 50.82(a)(1)”.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 31. The authority citation for part 51 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243) Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, sec. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

§ 51.53 [Amended]

■ 32. In § 51.53, in paragraph (d), remove the words “Each applicant for a license amendment authorizing decommissioning activities for a production or utilization facility either for unrestricted use or based on continuing use restrictions applicable to the site; and each applicant for a license amendment approving a license termination plan under § 50.82 of this chapter” and add in their place the words “Each applicant for a license amendment approving an irradiated fuel management plan under § 50.54(bb) of this chapter; each applicant for a license amendment approving a license termination plan under § 50.82 of this chapter or § 52.110 of this chapter or a decommissioning plan under § 50.82 of this chapter”.

§ 51.95 [Amended]

■ 33. In § 51.95, in paragraph (d) remove the words “of an operating or combined license authorizing decommissioning activities at a production or utilization facility covered by § 51.20,” and add in their place the words “approving an irradiated fuel management plan under § 50.54(bb) of this chapter, or the amendment approving a license termination plan under § 50.82 of this chapter or § 52.110 of this chapter or a decommissioning plan under § 50.82 of this chapter”.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 34. Revise the authority citation for part 52 to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 63, 81, 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2073, 2093, 2113, 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

■ 35. In § 52.0, revise paragraph (a) to read as follows:

§ 52.0 Scope; applicability of 10 CFR Chapter I provisions.

(a) This part governs the issuance of early site permits, standard design certifications, combined licenses, standard design approvals, and manufacturing licenses for nuclear power facilities licensed under Section 103 of the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242) through the termination of the associated 10 CFR part 52 licenses. This part also gives notice to all persons who knowingly provide to any holder of or applicant for an approval, certification, permit, or license, or to a contractor, subcontractor, or consultant of any of them, components, equipment, materials, or other goods or services that relate to the activities of a holder of or applicant for an approval, certification, permit, or license, subject to this part, that they may be individually subject to NRC enforcement action for violation of the provisions in § 52.4.

* * * * *

■ 36. In § 52.63, revise paragraph (b)(2) to read as follows:

§ 52.63 Finality of standard design certifications.

* * * * *

(b) * * *
(2) Subject to § 50.59 of this chapter, a licensee who references a design certification rule may make departures from the design of the nuclear power facility, without prior Commission approval, unless the proposed departure involves a change to the design as described in the rule certifying the design.

(i) The licensee shall maintain records of all departures from the design of the facility and these records must be maintained and available for audit until the date of termination of the license.

(ii) Licensees for which the NRC has docketed the certifications required under § 52.110(a) are not required to

retain records of departures from the design of the facility associated solely with structures, systems, and components that have been permanently removed from service using an NRC-approved change process.

* * * * *

§ 52.109 [Amended]

■ 37. In § 52.109, remove the words “to authorize ownership and possession of the production or utilization facility.”.

■ 38. In § 52.110, revise paragraphs (b), (d), (e), (f)(2), (h)(1)(i), and (h)(2), add paragraphs (h)(5) through (7), and revise paragraph (i) introductory text and paragraph (i)(2)(vi) to read as follows:

§ 52.110 Termination of license.

* * * * *

(b)(1) Upon the NRC's docketing of the licensee's certifications required under paragraph (a) of this section, or when a final legally effective order to permanently cease operations has come into effect, the 10 CFR part 52 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.

(2) The facility licensed under this part is no longer a utilization facility once the licensee meets the criteria of paragraph (b)(1) of this section and modifies the facility to be incapable of making use of special nuclear material without significant facility alterations necessary to restore the capability to make use of special nuclear material. The NRC maintains the authority to regulate the 10 CFR part 52 license with respect to the possession of special nuclear material, source material, and byproduct material under sections 53, 63, 81, and 161 of the Act, as applicable. Until the termination of the 10 CFR part 52 license under paragraph (k) of this section, the regulations of this chapter applicable to a utilization facility continue to apply to the holder of the license unless the regulations explicitly state otherwise.

* * * * *

(d)(1) Prior to or within 2 years following permanent cessation of operations, the licensee shall submit a post-shutdown decommissioning activities report (PSDAR) to the NRC, and a copy to the affected State(s). The PSDAR must contain a description of the planned decommissioning activities along with a schedule for their accomplishment, a discussion whether the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate federally issued environmental review documents, a description of any decommissioning activities whose environmental impacts

will not be so bounded and will be evaluated prior to the performance of the activities, and a site-specific decommissioning cost estimate, including the projected cost of managing irradiated fuel.

(2) The NRC shall notice in the **Federal Register** the receipt of the PSDAR and the availability for public comment of the PSDAR. The NRC shall also schedule a public meeting in the vicinity of the licensee's facility upon receipt of the PSDAR. The NRC shall include a notice in a forum, such as local newspapers, that is readily accessible to individuals in the vicinity of the site, and in the **Federal Register** notice required by this paragraph (d)(2), announcing the date, time and location of the meeting, along with a brief description of the purpose of the meeting.

(e) Licensees shall not perform any major decommissioning activities, as defined in § 50.2 of this chapter, until 90 days after the NRC has received the licensee's PSDAR submittal and until certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel, as required under § 52.110(a), have been submitted.

(f) * * *

(2) Result in significant environmental impacts not bounded by appropriate federally issued environmental review documents; or

* * * * *

(h) * * *

(1) * * *

(i) The withdrawals are for expenses for activities consistent with the definition of decommission in § 52.1;

* * * * *

(2) Initially, 3 percent of the generic amount specified in § 50.75(c) of this chapter may be used for decommissioning planning. For licensees that have submitted the certifications required under paragraph (a) of this section and commencing 90 days after the NRC has received the PSDAR, an additional 20 percent may be used. A site-specific decommissioning cost estimate must be submitted to the NRC before the licensee may use any funding in excess of these amounts.

* * * * *

(5) After submitting its site-specific decommissioning cost estimate required by paragraph (d)(1) of this section, and until the licensee has completed its final radiation survey and demonstrated that residual radioactivity has been reduced to a level that permits termination of its license, the licensee must annually submit to the NRC, by March 31, a financial assurance status report. The

report may combine the reporting requirements of § 72.30 of this chapter and § 52.110(h)(7). The report must include the following information, current through the end of the previous calendar year:

(i) The amount spent on decommissioning, both cumulative and over the previous calendar year, the remaining balance of any decommissioning funds, and the amount provided by other financial assurance methods being relied upon;

(ii) An estimate of the costs to complete decommissioning, reflecting any difference between actual and estimated costs for work performed during the year, and the decommissioning criteria upon which the estimate is based;

(iii) Any modifications occurring to a licensee's current method of providing financial assurance since the last submitted report; and

(iv) Any material changes to trust agreements or financial assurance contracts.

(6) If the sum of the balance of any remaining decommissioning funds, plus earnings on such funds calculated at not greater than a 2 percent real rate of return, together with the amount provided by other financial assurance methods being relied upon, does not cover the estimated cost to complete the decommissioning, the financial assurance status report must include additional financial assurance to cover the estimated cost of completion.

(7) After submitting its site-specific decommissioning cost estimate required by paragraph (d)(1) of this section, if spent fuel is on site, the licensee must annually submit to the NRC, by March 31, a report on the status of its funding for managing irradiated fuel. The report must include the following information, current through the end of the previous calendar year:

(i) The amount of funds accumulated to cover the cost of managing the irradiated fuel;

(ii) The projected cost of managing irradiated fuel until title to the fuel and possession of the fuel is transferred to the Secretary of Energy; and

(iii) If the funds accumulated do not cover the projected cost, a plan to obtain additional funds to cover the cost.

(i) All power reactor licensees that have loaded fuel into the reactor must submit an application for termination of license. The application for termination of license must be accompanied or preceded by a license termination plan to be submitted for NRC approval.

* * * * *

(2) * * *

(vi) An updated site-specific estimate of remaining decommissioning costs and identification of sources of funds for license termination, spent fuel management, and ISFSI decommissioning, as applicable;

* * * * *

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

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

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

■ 40. In § 72.13, add paragraph (e) to read as follows:

§ 72.13 Applicability.

* * * * *

(e) The following sections apply to activities associated with a general license, where the licensee has elected to provide for physical protection of the spent fuel in accordance with § 72.212(b)(9)(vii)(A); § 72.1; § 72.2(a)(1), (b), (c), and (e); § 72.3 through 72.6(c)(1); §§ 72.7 through 72.13(a) and (e); § 72.30(b), (c), (d), (e), and (f); § 72.32(c) and (d); § 72.44(b) and (f); § 72.48; § 72.50(a); § 72.52(a), (b), (d), and (e); § 72.60; § 72.62; §§ 72.72 through 72.80(f); § 72.82 through 72.86; §§ 72.104 through 72.106; §§ 72.122 through 72.126; §§ 72.140 through 72.176; §§ 72.180 through 72.186; § 72.190; § 72.194; §§ 72.210 through 72.220; and § 72.240(a).

■ 41. In § 72.30, revise paragraph (b) and paragraph (c) introductory text to read as follows:

§ 72.30 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b)(1) Each applicant for a specific license under this part must submit, as part of its application, a decommissioning funding plan for NRC review and approval.

(2) Each holder of a general license under this part must submit, prior to the

initial storage of spent fuel under § 72.212(a)(3), a decommissioning funding plan for NRC review and approval.

(3) The decommissioning funding plans required by paragraphs (b)(1) and (2) of this section must contain:

(i) Information on how reasonable assurance will be provided that funds will be available to decommission the ISFSI or MRS.

(ii) A detailed cost estimate for decommissioning, in an amount reflecting:

(A) The cost of an independent contractor to perform all decommissioning activities;

(B) An adequate contingency factor; and

(C) The cost of meeting the § 20.1402 of this chapter criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of § 20.1403 of this chapter, the cost estimate may be based on meeting the § 20.1403 criteria.

(iii) Identification of and justification for using the key assumptions contained in the decommissioning cost estimate.

(iv) A description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility.

(v) The volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the criteria for license termination.

(vi) A certification that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning.

(c) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan must be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. The decommissioning funding plan must update the information submitted with the original or prior plan and must specifically consider the effect of the following events on decommissioning costs:

* * * * *

■ 42. In § 72.32, revise paragraphs (a) introductory text and (c) to read as follows:

§ 72.32 Emergency Plan.

(a) Each application for an ISFSI that is licensed under this part which is not located on the site or within the exclusion area, as defined in 10 CFR part 100, of a nuclear power reactor licensed under part 50 of this chapter or part 52 of this chapter must be

accompanied by an Emergency Plan that includes the following information:

* * * * *

(c) For an ISFSI that is located on the site or within the exclusion area, as defined in 10 CFR part 100, of a nuclear power reactor licensed under parts 50 or 52 of this chapter, an emergency plan that meets the requirements in appendix E to part 50 of this chapter and § 50.47(b) of this chapter, or the requirements of 10 CFR 50.200(a) or 10 CFR 50.200(b) shall be deemed to satisfy the requirements of this section.

■ 43. In § 72.44, revise paragraph (f) to read as follows:

§ 72.44 License conditions.

* * * * *

(f) A licensee shall follow and maintain in effect an emergency plan that is approved by the Commission. The licensee may make changes to the approved plan without Commission approval only if such changes do not decrease the effectiveness of the plan. Within six months after any change is made, the licensee shall submit, in accordance with § 72.4, a report containing a description of any changes made in the plan addressed to Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, with a copy to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter. Proposed changes that decrease the effectiveness of the approved emergency plan must not be implemented unless the licensee has received prior approval of such changes from the Commission. Licensees need not comply with the requirements of this paragraph when all spent fuel has been removed from the site.

■ 44. In § 72.62, revise paragraph (a)(2) to read as follows:

§ 72.62 Backfitting.

(a) * * *

(2) Procedures or organization required to operate or decommission an ISFSI or MRS.

* * * * *

■ 45. In § 72.72, revise paragraph (d) to read as follows:

§ 72.72 Material balance, inventory, and records requirements for stored materials.

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, records of spent fuel, high-level radioactive waste, and reactor-related GTCC waste containing special nuclear material meeting the requirements in paragraph (a) of this section must be kept in duplicate. The duplicate set of records must be kept at

a separate location sufficiently remote from the original records that a single event would not destroy both sets of records.

(2) A single copy of the records described in paragraph (d)(1) of this section may be maintained in a single storage facility provided the facility meets the requirements of an NRC-approved quality assurance program for the storage of records.

(3) Records of spent fuel or reactor-related GTCC waste containing special nuclear material transferred out of an ISFSI or records of spent fuel, high-level radioactive waste, or reactor-related GTCC waste containing special nuclear material transferred out of an MRS must be preserved for a period of five years after the date of transfer.

■ 46. In § 72.212, add paragraph (b)(9)(vii) to read as follows:

§ 72.212 Conditions of general license issued under § 72.210.

* * * * *

(b) * * *

(9) * * *

(vii)(A) Upon NRC docketing of the certifications required under § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter, and when all spent fuel has been placed in dry cask storage at the facility, the licensee may, as an alternative to the requirements of § 72.212(b)(9)(i) through (vi), provide for physical protection of the spent fuel under subpart H of this part and § 73.51 of this chapter.

(B) A licensee who elects to provide physical protection under subpart H of this part and § 73.51 of this chapter will submit their physical security plan to the NRC under § 50.54(p) of this chapter.

* * * * *

■ 47. Revise § 72.218 to read as follows:

§ 72.218 Termination of licenses.

(a) Upon removal of the spent fuel stored under this general license from the reactor site, the licensee must decommission the ISFSI consistent with requirements in § 50.82 of this chapter or § 52.110 of this chapter, as applicable.

(b) The general license under this part is terminated upon termination of the 10 CFR part 50 or 10 CFR part 52 license under § 50.82(a)(11) of this chapter or § 52.110(k) of this chapter, respectively.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 48. The authority citation for part 73 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 170D, 170E, 170H,

170I, 223, 229, 234, 170I (42 U.S.C. 2073, 2167, 2169, 2201, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 49. In § 73.51, revise paragraphs (a) introductory text, (a)(1) introductory text, and (a)(2) and add paragraph (a)(3) to read as follows:

§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

(a) *Applicability.* Notwithstanding the provisions of § 73.20, § 73.50, or § 73.67, the physical protection requirements of this section apply to each licensee that stores spent nuclear fuel and high-level radioactive waste:

(1) Under a specific license issued pursuant to part 72 of this chapter:

* * * * *

(2) At a geologic repository operations area (GROA) licensed pursuant to part 60 or 63 of this chapter; or

(3) Under a general license issued pursuant to part 72 of this chapter and upon the NRC's docketing of the certifications required under § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter, when all spent fuel has been placed in dry cask storage at the facility, and notification has been made to the NRC under the provisions of § 72.212(b)(9)(vii) of this chapter.

* * * * *

■ 50. In § 73.54, remove the introductory text, revise the paragraph (a) introductory text, paragraph (b) introductory text, and paragraph (c) introductory text, and add paragraphs (i) and (j) to read as follows:

§ 73.54 Protection of digital computer and communication systems and networks.

(a) Each holder of an operating license for a nuclear power reactor under part 50 of this chapter and each holder of a combined license under part 52 of this chapter for which the Commission has made the finding under § 52.103(g) of this chapter shall provide high assurance that its digital computer and communication systems and networks are adequately protected against cyber attacks, up to and including the design basis threat as described in § 73.1.

* * * * *

(b) To accomplish the objectives in paragraph (a) of this section, the licensee shall:

* * * * *

(c) The licensee's cyber security program must be designed to:

* * * * *

(i) The requirements of this section no longer apply once the following criteria are satisfied:

(1) The NRC has docketed the licensee's certifications required under § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter; and

(2) At least 10 months (for a boiling water reactor) or at least 16 months (for a pressurized water reactor) have elapsed since the date of permanent cessation of operations if the fuel meets the criteria of § 50.54(q)(7)(ii) of this chapter, or an NRC-approved alternative spent fuel decay period, submitted under § 50.54(q)(7)(ii)(A) or (B) of this chapter, has elapsed.

(j) *Removal of cyber security license condition.* The cyber security plan license condition, which requires the licensee to fully implement and maintain in effect all provisions of the Commission-approved cyber security plan including changes made pursuant to the authority of § 50.90 of this chapter and § 50.54(p) of this chapter, is removed from the license once the conditions in paragraph (i) of this section are satisfied.

■ 51. In § 73.55:

■ a. Revise paragraph (b)(3) introductory text;

■ b. Add paragraphs (b)(9)(ii)(B)(1) and (2);

■ c. Revise paragraphs (c)(6), (e)(9)(v)(A), (j)(4)(ii), and (p)(1)(i) and (ii).

The revisions and additions read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(b) * * *

(3) The physical protection program must be designed to prevent significant core damage until the NRC has docketed the certifications required under § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter. The physical protection program must also be designed to prevent spent fuel sabotage. Specifically, the program must:

* * * * *

(9) * * *

(ii) * * *

(B) * * *

(1) Licensees who are implementing 10 CFR part 26, regardless of whether they are required to do so, are in compliance with paragraph (b)(9)(ii)(B) of this section.

(2) Licensees, upon the NRC's docketing of their certifications required

under § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter, will be in compliance with paragraph (b)(9)(ii)(B) of this section by implementing the following:

(i) A fitness for duty program in which individuals who maintain unescorted access authorization and have unescorted access to a vital area, individuals who perform certified fuel handler duties under § 50.2 of this chapter prior to all spent nuclear fuel at a site being placed in dry cask storage, individuals who perform the duties under § 26.4(a)(5) of this chapter, and individuals who perform duties under § 26.4(g) of this chapter, are subject to the requirements in 10 CFR part 26 except for subparts I and K; and

(ii) A fitness for duty program in which those individuals who maintain unescorted access authorization and have unescorted access to the protected area who are not included in paragraph (b)(9)(ii)(B)(2)(i) of this section, are subject to the requirements of §§ 26.31(c)(1) and (2) and 26.33 of this chapter.

* * * * *

(c) * * *

(6) *Cyber Security Plan.* The licensee shall establish, maintain, and implement a Cyber Security Plan in accordance with the requirements of § 73.54. The licensee no longer needs to maintain and implement its Cyber Security Plan once the criteria in § 73.54(i) have been satisfied.

* * * * *

(e) * * *

(9) * * *

(v) * * *

(A) The reactor control room, unless the licensee has submitted and the NRC has docketed the certifications required under § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter, and the licensee has documented that all vital equipment has been removed from the control room and the control room does not serve as the vital area boundary for other vital areas;

* * * * *

(j) * * *

(4) * * *

(ii) A system for communication with the control room, or, if the NRC has docketed the certifications required under § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter, a system for communication with the certified fuel handler or the senior on-shift licensee representative responsible for overall safety and security of the permanently shutdown and defueled facility.

* * * * *

(p) * * *

(1) * * *

(i) In accordance with § 50.54(x) and (y) of this chapter, the licensee may suspend any security measures under this section in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. This suspension of security measures must be approved as a minimum by a licensed senior operator, or, if the certifications required under § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter have been docketed by the NRC, by either a licensed senior operator or a certified fuel handler, before taking this action.

(ii) During severe weather when the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection. This suspension of security measures must be approved, as a minimum, by a licensed senior operator, or, if the certifications required under § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter have been docketed by the NRC, by either a licensed senior operator or a certified fuel handler, with input from the security supervisor or manager, before taking this action.

* * * * *

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 52. The authority citation for part 140 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

■ 53. In § 140.11, add paragraph (a)(5), redesignate paragraph (b) as paragraph (c), revise newly redesignated paragraph (c), and add new paragraph (b) to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

- (a) * * *
- (5) In the amount of at least \$100,000,000, for each nuclear reactor:
 - (i) For which the NRC has docketed the certifications required under § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter, and
 - (ii) For which at least 10 months (for a boiling water reactor) or 16 months (for a pressurized water reactor) have elapsed since the date of permanent cessation of operations if the fuel meets the criteria of § 50.54(q)(7)(ii) of this chapter, or for which an NRC-approved alternative to the 10- or 16-month spent fuel decay period, submitted under § 50.54(q)(7)(ii)(A) or (B) of this chapter, has elapsed.
- (b) Secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges) will no

longer be required once the criteria in § 140.11(a)(5)(i) and (ii) have been met.

(c) In any case where two or more nuclear reactors at the same location are licensed under parts 50, 52, or 54 of this chapter, the total financial protection required of the licensee for all such reactors (excluding any applicable secondary financial protection) is the highest amount which would otherwise be required for any one of those reactors; provided, that such financial protection covers all reactors at the location.

■ 54. In § 140.81, revise paragraph (a) to read as follows:

§ 140.81 Scope and purpose.

(a) *Scope.* This subpart applies to applicants for and holders of operating licenses issued under part 50 of this chapter, combined licenses issued under part 52 of this chapter, or renewed licenses issued under part 54 of this chapter, authorizing operation of production facilities and utilization facilities, and to other persons indemnified with respect to such facilities. This subpart shall cease to apply to licensees under part 50, part 52, and part 54 of this chapter once the licensee satisfies the criteria in § 140.11(a)(5)(i) and (ii).

* * * * *

Dated: February 9, 2022.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

[FR Doc. 2022-03131 Filed 3-2-22; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Western Fanshell and "Ouachita" Fanshell and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS–R3–ES–2021–0061;
FF09E21000 FXES1111090FEDR 223]

RIN 1018–BE79

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Western Fanshell and “Ouachita” Fanshell and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the western fanshell (*Cyprogenia aberti*), a freshwater mussel species from Arkansas, Kansas, Missouri, and Oklahoma, and the “Ouachita” fanshell (*Cyprogenia cf. aberti*), a freshwater mussel species from Arkansas and Louisiana, as threatened species and to designate critical habitat for these species under the Endangered Species Act of 1973, as amended (Act). This document also proposes a rule issued under section 4(d) of the Act (4(d) rule) for these mussel species and serves as our 12-month finding on a petition to list the western fanshell. The proposed critical habitat designation for the western fanshell totals approximately 360 river miles (579 kilometers), all of which are occupied by the species, in Arkansas, Kansas, and Missouri, and the proposed critical habitat designation for the “Ouachita” fanshell totals approximately 294 river miles (474 kilometers), all of which are occupied by the species, in Arkansas. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the western fanshell and “Ouachita” fanshell. If we finalize this rule as proposed, it would add these species to the List of Endangered and Threatened Wildlife and extend the Act’s protections to these species and their designated critical habitats.

DATES: We will accept comments received or postmarked on or before May 2, 2022. 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 April 18, 2022.

ADDRESSES:

Written comments: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS–R3–ES–2021–0061, 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–R3–ES–2021–0061, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file and are available at <https://www.fws.gov/midwest/> for western fanshell and <https://www.fws.gov/southeast/> for “Ouachita” fanshell, at <http://www.regulations.gov> under Docket No. FWS–R3–ES–2021–0061, and at the Missouri and Arkansas Ecological Services Field Offices (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for the critical habitat designation will also be available at the Service websites and field offices set out above or at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For information about the western fanshell, contact Karen Herrington, Field Supervisor, U.S. Fish and Wildlife Service, Missouri Ecological Services Field Office, 101 Park DeVill Drive, Suite A, Columbia, MO 65203–0057; telephone 573–234–2132. For information about the “Ouachita” fanshell, contact Melvin Tobin, Field Supervisor, U.S. Fish and Wildlife Service, Arkansas Ecological Services Field Office, 110 South Amity, Suite 300, Conway, AR 72032–8975; telephone 501–513–4473. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species is an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does. We propose to list the western fanshell and “Ouachita” fanshell as threatened species with a rule issued under section 4(d) of the Act, and we propose the designation of critical habitat for these two species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that water quality degradation, altered flow, landscape changes, and habitat fragmentation, all of which are exacerbated by the effects of climate change, are the primary threats affecting the western fanshell and “Ouachita” fanshell.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into

consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

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 governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of these species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(5) Information on regulations that are necessary and advisable to provide for the conservation of western fanshell and "Ouachita" fanshell and that the Service can consider in developing a 4(d) rule for these species. In particular, we seek information concerning the extent to which we should include any of the Act's section 9 prohibitions in the 4(d) rule or whether we should consider any additional exceptions from the prohibitions in the 4(d) rule. In addition, we request comments on whether we should include an exception from permitting requirements for individuals conducting presence/absence surveys, studies to document

habitat use, population monitoring, and evaluations of potential impacts to the fanshells, provided the individual holds a valid scientific collecting permit for mussels from the appropriate State agency.

(6) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

(7) Specific information on:

(a) The amount and distribution of western fanshell and "Ouachita" fanshell habitat;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of these species, should be included in the designation and why;

(c) Any additional areas occurring within the range of the species that should be included in the designation because they (1) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (2) are unoccupied at the time of listing and are essential for the conservation of the species;

(d) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(e) What areas not occupied at the time of listing are essential for the conservation of these species. We particularly seek comments:

(i) Regarding whether occupied areas are adequate for the conservation of these species;

(ii) Providing specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of these species and contain at least one physical or biological feature essential to the conservation of these species; and

(iii) Explaining whether or not unoccupied areas fall within the definition of "habitat" at 50 CFR 424.02 and why.

(8) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(10) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts, the description of the environmental impacts in the draft environmental assessment is complete and accurate, and any additional information regarding probable economic impacts that we should consider.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. If you think we should exclude any additional areas, please provide credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion.

(12) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

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 <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>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection 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 western fanshell or “Ouachita” fanshell is endangered instead of threatened, or we may conclude that either species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, and may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate in light of comments and new information we receive. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address

shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service’s website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

We identified the western fanshell as a “Category 2” candidate in our May 22, 1984, Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21664). Category 2 candidates were defined as species for which we had information that proposed listing was possibly appropriate, but conclusive data on biological vulnerability and threats were not available to support a proposed rule at the time. The species remained so designated in subsequent candidate notices of review (CNORs) (54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). In the February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of Category 2 species as candidates; therefore, the western fanshell was no longer a candidate species.

On April 20, 2010, we received a petition from the Center for Biological Diversity (CBD), Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy, to list 404 aquatic, riparian, and wetland species, including the western fanshell, from the southeastern United States as endangered or threatened species and to designate critical habitat concurrent with listing under the Act. On September 27, 2011, we published a 90-day finding in the **Federal Register** (76 FR 59836), concluding that the petition presented substantial information that indicated listing the western fanshell may be warranted. Since that time, the “Ouachita” fanshell has been determined to be a separate species from western fanshell (Williams *et al.* 2017, p. 47; see discussion of taxonomy below); therefore, we conducted a discretionary status review for the “Ouachita” fanshell concurrent with our status review for the western fanshell.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the western fanshell and “Ouachita” fanshell. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of these species, including the impacts of past, present, and future factors (both negative and beneficial) affecting these species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of five appropriate specialists regarding the SSA report. We received two responses. We also sent the SSA report to eight Federal and State partners with expertise in aquatic ecology and freshwater mussel biology, taxonomy, and conservation. We received reviews from a Federal biologist and a State biologist.

I. Proposed Listing Determination

Background

The western fanshell (*Cyprogenia aberti*) is a freshwater mussel in the Unionidae family. Adults are a dull tan with a distinctive ray pattern from bands of tiny pigment flecks. The shell is thick, compressed to moderately inflated, and round to triangular (up to 3 inches (76 millimeters)), with a wrinkled or rough appearance (Conrad 1850, p. 10; McMurray *et al.* 2012, p. 30; Oesch 1995, pp. 143–144; Roe 2004, pp. 4–5).

Recent molecular analysis of *Cyprogenia* identified the fanshell from the Ouachita River basin in Arkansas and Louisiana as an independent evolutionary lineage (Chong *et al.* 2016, pp. 2445–2449). There is confusion regarding what name is available for the Ouachita River drainage fanshell, but the distinctiveness of this species was recognized in the most recent list of freshwater mussels of the United States and Canada (Williams *et al.* 2017, p. 47). The Arkansas Wildlife Action Plan refers to the species as the “Ouachita” fanshell (*C. cf. aberti*) (Arkansas Game and Fish Commission 2015, p. 974). Based on this information, we find the “Ouachita” fanshell is a listable entity under the Act, and we follow this naming convention until a specific epithet can be designated.

The western fanshell is currently found in the Lower Mississippi-St. Francis, Neosho-Verdigris, and Upper

White River basins, within the States of Arkansas, Kansas, Missouri, and Oklahoma (Service 2020, pp. 21–28; see Figure 1, below). It is considered

extirpated from the Lower Arkansas basin. The “Ouachita” fanshell currently occurs in the Lower Red-Ouachita basin in Arkansas and

historically in Louisiana (Service 2020, pp. 29–31; see Figure 2, below).

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Index Map: Western Fanshell Rangewide Distribution

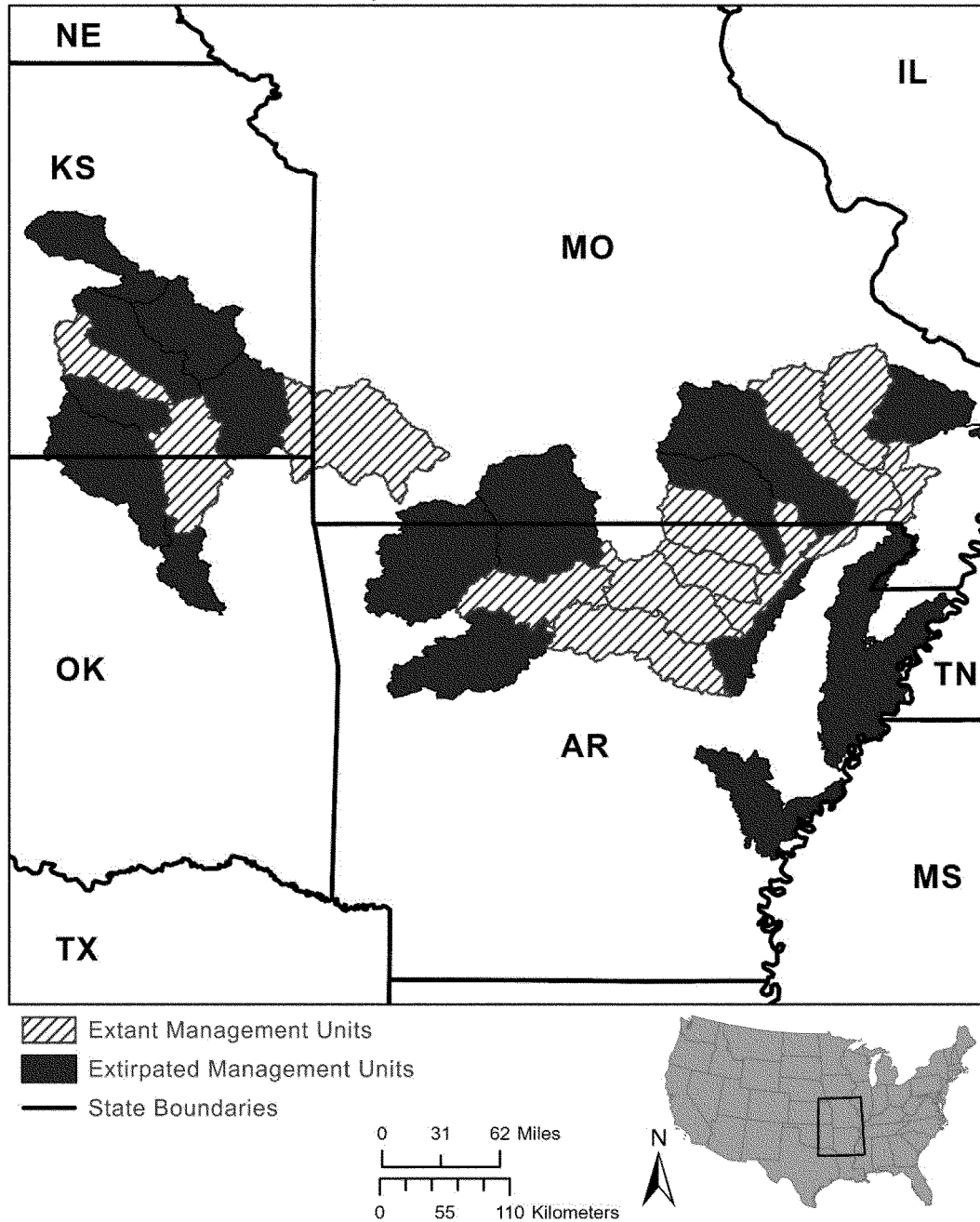


Figure 1. Distribution of the extant and extirpated management units of western fanshell in Arkansas, Kansas, Missouri, and Oklahoma.

Index Map: "Ouachita" Fanshell Rangewide Distribution

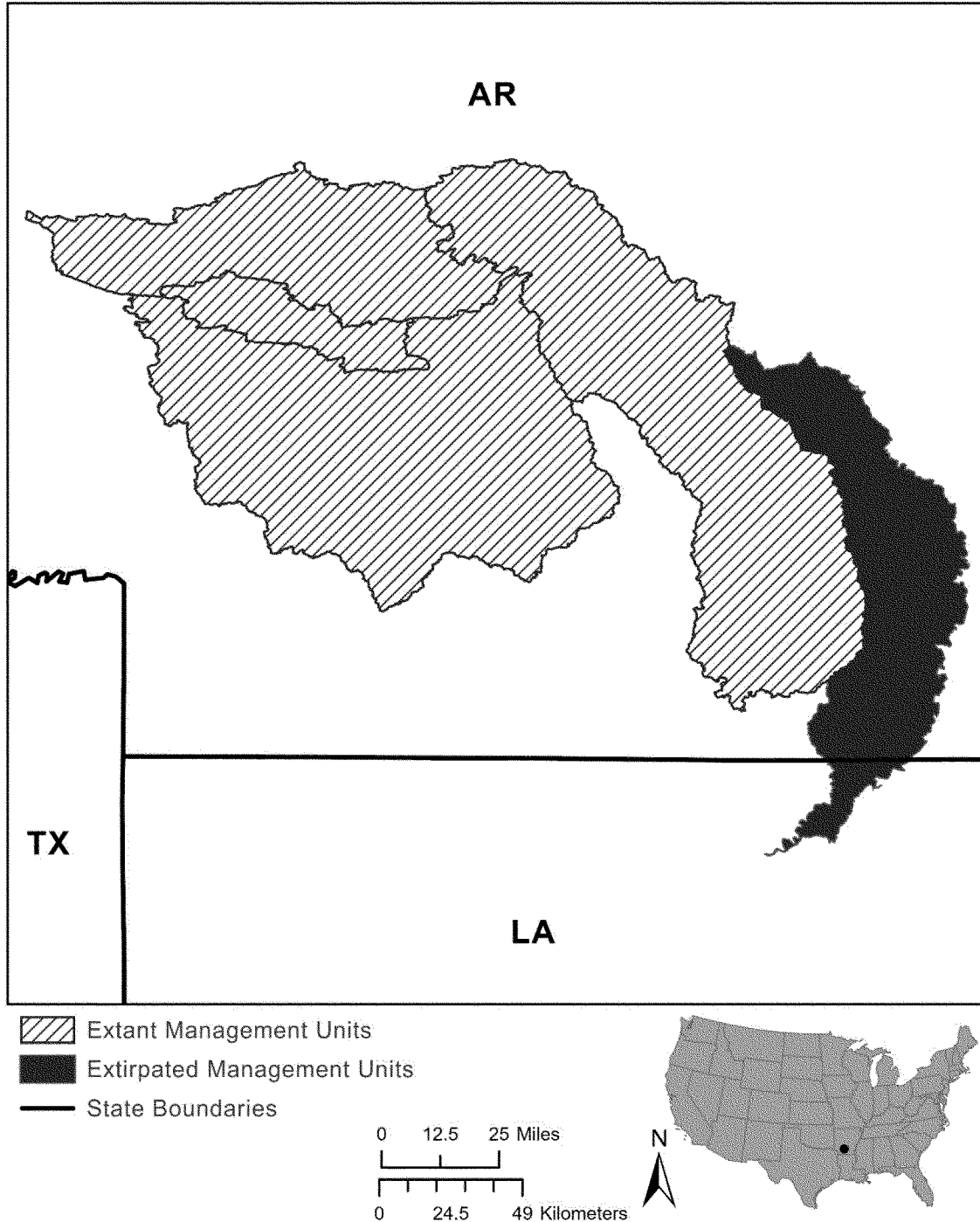


Figure 2. Distribution of the extant and extirpated management units of "Ouachita" fanshell in Arkansas and Louisiana.

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Both species are typically found in large creeks and rivers with good water quality, moderate to swift current, and gravel-sand substrates, but specific

information on microhabitat requirements is lacking. Like all mussels, these two species of fanshell are omnivores that primarily filter-feed on a wide variety of microscopic

particulate matter suspended in the water column, including phytoplankton, zooplankton, bacteria, detritus, and dissolved organic matter (Haag 2012, p. 26). As with most freshwater mussels,

the fanshell mussels have a unique life cycle that relies on fish hosts for successful reproduction (Barnhart *et al.* 2008, pp. 371–373; Vaughn and Taylor 1999, p. 913; Barnhart 1997, p. 12).

Thorough reviews of the taxonomy, life history, and ecology of the western fanshell and “Ouachita” fanshell are presented in detail in the SSA report (Service 2020, pp. 9–12).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean

that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term “foreseeable future” extends only so far into the future as the Service can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species’ likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial

data regarding the status of these species, including an assessment of the potential threats to these species. The SSA report does not represent a decision by the Service on whether these species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R3–ES–2021–0061 on <http://www.regulations.gov> and at <https://www.fws.gov/midwest/> and <https://www.fws.gov/southeast/>.

To assess the western fanshell’s and “Ouachita” fanshell’s viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species’ ecological requirements for survival and reproduction at the individual, population, and species levels and described the beneficial and risk factors influencing the species’ viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated each individual species’ life-history needs. The next stage involved an assessment of the historical and current condition of the species’ demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species’ responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the two species and their resources, and the threats that influence both species' current and future condition, to assess each species' overall viability and the risks to that viability.

Species Needs

Fanshell mussels feed primarily on a wide variety of microscopic particulate matter, including phytoplankton, zooplankton, bacteria, detritus, and dissolved organic matter (Haag 2012, p. 26). Juveniles likely pedal feed in the sediment, whereas adults filter-feed from the water column.

As with most freshwater mussels, both fanshell mussels rely on a host fish for reproduction. The female mussel holds the fertilized eggs internally as they develop into larvae. Once mature, the larvae are released as glochidia, which attach on the gills, head, or fins of fishes (Barnhart *et al.* 2008, pp. 371–373; Vaughn and Taylor 1999, p. 913). Glochidia encyst (enclose in a cyst-like structure) on the host's tissue and draw nutrients from the fish. The glochidia for the fanshell mussels remain encysted for about a month until transformation to the juvenile stage, at which point they release from the fish and drop to the substrate (Barnhart 1997, p. 12). Glochidia die if they fail to find a host fish, attach to the wrong species of host fish, attach to a fish that has developed immunity from prior infestations, or attach to the wrong location on a host fish (Bogan 1993, p. 599; Neves 1991, p. 254).

Logperch (*Percina caprodes*) is a suitable fish host for both fanshell species in all river basins (Eckert 2003, pp. 18–19). Slenderhead darter (*Percina phoxocephala*) and orangebelly darter (*Etheostoma radiosum*) are suitable hosts for “Ouachita” fanshell (Eckert 2003, p. 46), while slenderhead darter, fantail darter (*Etheostoma flabellare*), rainbow darter (*Etheostoma caeruleum*), and orangebelly darter are suitable hosts for western fanshell, but only for their respective sympatric fanshell mussel population (Eckert 2003, p. 33). In other words, glochidia had greater success transforming on darters from the same stream as the mussel. For example, a higher percentage of glochidia from Ouachita River transformed on orangebelly darters from Ouachita River than on orangebelly darters from Verdigris River (Eckert 2003, p. 11).

We assessed the best available information to identify the physical and biological needs to support individual

fitness at all life stages for the western fanshell and “Ouachita” fanshell. Full descriptions of all needs are available in chapter 2 of the SSA report (Service 2020, pp. 9–15). Based upon the best available scientific and commercial information, the resource needs for both species are characterized as:

- Stable river channels and banks (for example, stable riffles, sometimes with runs, and mid-channel island habitats that provide flow refuges), consisting of mixed sand, gravel, and cobble substrates with low to moderate amounts of fine sediment and attached filamentous algae;
- A hydrologic flow regime (the severity, frequency, duration, and seasonality of discharge over time) that maintains the benthic habitats where the species are found and the river connectivity with the floodplain;
- Habitat connectivity (that is, a lack of barriers for passage of host fish, which are necessary for dispersal of mussels);
- Water and sediment quality, such as (but not limited to) dissolved oxygen above 3 parts per million (ppm), ammonia generally below 1.0 ppm total ammonia-nitrogen, temperatures generally below 80 degrees Fahrenheit (°F) (27 degrees Celsius (°C)), low concentrations of metals, and an absence of excessive total suspended solids and other pollutants;
- The presence and abundance of fish hosts (logperch, slenderhead darter, fantail darter, rainbow darter, and orangebelly darter) necessary for recruitment of the fanshell mussels; and
- Appropriate food sources (phytoplankton, zooplankton, protozoans, detritus, and dissolved organic matter) in adequate supply.

Threats Analysis

We identified water quality degradation, altered flow, landscape changes, and habitat fragmentation, all of which are exacerbated by the effects of climate change, as the primary threats affecting the western fanshell and “Ouachita” fanshell (Service 2020, p. 65). We acknowledge that invasive species can have individual and, in some circumstances, population-level effects to mussels. However, the best available data do not support that invasive species are a driving force affecting the current or future conditions of these two fanshell mussels (Service 2020, pp. 62–63). The primary threats are discussed below.

Water Quality

Chemical contaminants are a major threat in the decline of mussel species (Cope *et al.* 2008, p. 451; Richter *et al.*

1997, p. 1081; Strayer *et al.* 2004, p. 436; Wang *et al.* 2007a, p. 2029). Chemicals enter rivers through point and nonpoint discharges, including spills, industrial and municipal effluents, and residential and agricultural runoff. These sources contribute organic compounds, heavy metals, nutrients, pesticides, and a wide variety of newly emerging contaminants, such as pharmaceuticals, to the aquatic environment.

The western fanshell has been exposed to zinc and copper at concentrations that cause acute toxicity (Service 2020, p. 41) and may be exposed to toxic levels of lead in the future (Service 2020, Appendix I–D–I–E). Metals from mine water runoff (for example, Tri-State Mining District in southwest Missouri and southeast Kansas) contributed to mussel declines in Shoal Creek and Spring River in the Arkansas River basin (Angelo *et al.* 2007, p. 467; EcoAnalysts, Inc. 2018, p. 59).

Nutrients, such as nitrogen and phosphorus, primarily occur in runoff from livestock farms, feedlots, heavily fertilized row crops and pastures (Peterjohn and Correll 1984, p. 1471), post timber management activities, and urban and suburban runoff (including residential lawns and leaking septic tanks). Sources of ammonia include agricultural wastes (animal feedlots and nitrogenous fertilizers), municipal wastewater treatment plants, and industrial waste (Augsburger *et al.* 2007, p. 2569), as well as precipitation and natural processes (decomposition of organic nitrogen) (Augsburger *et al.* 2003, p. 2569; Goudreau *et al.* 1993, p. 212; Hickey and Martin 1999, p. 44; Newton *et al.* 2003, p. 1243). As discussed above under *Species Needs*, both fanshell species require dissolved oxygen above 3 ppm and ammonia generally below 1.0 ppm total ammonia-nitrogen. We analyzed total ammonia nitrogen data in rivers occupied by the two fanshell mussel species, but did not find concentrations at levels expected to result in acute or chronic toxicity to mussels (Service 2020, p. 41, Appendix I–D–I–E). In addition, nutrient enrichment increases primary productivity, and the associated algae respiration depletes dissolved oxygen levels. However, available water quality data indicate that hypoxia (low dissolved oxygen) is not occurring in occupied streams and is not currently a threat to the fanshell mussels.

Flow

Reductions in the diversity and abundance of mussels are principally attributed to habitat alteration caused by inundation of free-flowing rivers and

streams (Neves *et al.* 1997, p. 60), which has occurred in portions of the fanshell mussel's ranges (for example, White, Ouachita, Caddo, and Neosho rivers). The construction of reservoirs and other impoundments permanently alters the hydrology, with deleterious effects to fish host movement and mussel dispersal.

The water released from the hypolimnion (lower layers of the lake) in large reservoirs is cold and often devoid of oxygen and necessary nutrients, which adversely affects mussel survival. Cold water can stunt mussel growth and delay or hinder spawning (Vaughn and Taylor 1999, p. 917). Reservoirs, like Bull Shoals on the White River in north-central Arkansas, that release cold water from the bottom of the reservoir (in part to support nonnative rainbow trout and brown trout recreational fisheries) can affect water temperatures for many kilometers downstream. These cold releases create an extinction gradient, where freshwater mussels are absent or present in low numbers near the dam, and abundance does not rebound until some distance downstream where ambient conditions raise the water temperature to within the tolerance limits of mussels (Vaughn and Taylor 1999, pp. 915–916).

In addition to low water temperature limits, freshwater mussels also have an upper water temperature threshold. As described above under *Species Needs*, both fanshell species require water temperatures generally below 80 °F (27 °C).

In “Ouachita” fanshell occupied streams from 1990 to 2018, the percent of water temperature samples exceeding 27 °C ranged from 6.9 to 15.4 percent, with maximum water temperature ranging from 30.3 °C to 36.6 °C. In western fanshell MUs from 1990 to 2018, the percent of water temperature samples exceeding 27 °C ranged from 0 to 12.6 percent, with maximum water temperature ranging from 22.0 °C to 35.8 °C.

Recruitment in some species of mussels is significantly related to components of spring and summer flow (Ries *et al.* 2016, p. 711). High velocity flows during spawning can decrease fertilization success (Ries *et al.* 2016, p. 712) and affect juvenile settling (Daraio *et al.* 2010, p. 838; Hardison and Layzer 2001, p. 77). Mussel beds may be constrained by threshold limits at both flow extremes. Under low flow conditions, mussels may require a minimum flow to transport nutrients, oxygen, and waste products. Under high flow conditions, areas with relatively low flow may provide a refuge for mussels (Steuer *et al.* 2008, p. 67).

Fanshell mussels undoubtedly evolved in the presence of extreme hydrological conditions to some degree, including severe droughts leading to dewatering, and heavy rains leading to damaging scour events and movement of mussels and substrate, although the frequency, duration, and intensity of these events may be different from today. Streamflow and overall discharge for rivers inhabited by western and “Ouachita” fanshell mussels will likely decline due to climate change and projected increases in temperatures and evaporation rates, resulting in more frequent and intense droughts (LaFontaine *et al.* 2019, entire).

Excessive sediments adversely affect riverine mussel populations requiring clean, stable streams (Brim Box and Mossa 1999, p. 99; Ellis 1936, pp. 39–40). Specific biological effects include reduced feeding and respiratory efficiency from clogged gills, disrupted metabolic processes, reduced growth rates, limited burrowing activity, physical smothering, and disrupted host fish attraction mechanisms (Ellis 1936, pp. 39–40; Hartfield and Hartfield 1996, p. 373; Marking and Bills 1979, p. 210; Vannote and Minshall 1982, pp. 4105–4106; Waters 1995, pp. 173–175). The physical effects of sediment on mussel habitat include changes in suspended and bed material load; changes in bed sediment composition associated with increased sediment production and runoff in the watershed; channel changes in form, position, and degree of stability; changes in depth or the width and depth ratio that affects light penetration and flow regime, actively aggrading (filling) or degrading (scouring) channels; and changes in channel position. These effects to habitat may dislodge, transport downstream, or leave mussels stranded (Brim Box and Mossa 1999, pp. 109–112; Kanehl and Lyons 1992, pp. 4–5; Vannote and Minshall 1982, p. 4106).

The majority of sediment transport occurs during floods (Clark and Mangham 2019, pp. 6–7; Kondolf 1997, p. 533). The increase in flooding severity results in greater sediment transport, with important effects to substrate stability and benthic habitats for freshwater mussels, as well as other organisms that are dependent on stable benthic habitats (Kondolf 1997, p. 535). High base flows can incise channels, erode riverbanks, scour mussel beds, and remove substrate preferred by mussels. Over time, the physical force of these higher base flows can dislodge mussels from the sediment and permanently alter the geomorphology of rivers (Clark and Mangham 2019, pp. 6–7; Kondolf 1997, p. 533).

Runoff from impervious surfaces prevalent in urban areas affects the natural hydrology of streams by increasing flood magnitude, duration, and frequency (Bressler *et al.* 2009, p. 292). Frequent floods in urban areas scour stream substrate and banks, thereby increasing erosion and sedimentation and altering geomorphology. Geomorphic changes, such as changes in channel width, occur with impervious areas as low as 2 to 10 percent (Booth and Jackson 1997, p. 1084; Dunne and Leopold 1978, pp. 275–277; Morisawa and LaFlure 1979, Figure 11). Initial degradation of fish communities and lower larval densities have been associated with as low as 10 percent impervious areas (Limburg and Schmidt 1990, pp. 1241–1242; Steedman 1988, pp. 498–499). Unpaved road networks also interact with streams, delivering sediment runoff and increasing water velocity entering stream channels, thereby increasing stream energy, eroding streambanks, scouring channels, and increasing flooding (Coffin 2007, pp. 397–398).

Landscape Alterations

Many rivers where the western fanshell and “Ouachita” fanshell occur are threatened by land use activities and changes (for example, increased urbanization, alteration of riparian buffers, improperly designed and maintained unpaved roads). Urbanization of a watershed can result in increased pollutant loads from stormwater runoff, altered flow, decreased bank stability, and increased water temperature. Urbanization can also indirectly increase channel erosion and downstream sedimentation by increasing the frequency and volume of channel-altering storm flows (Hammer 1972, p. 1530; Leopold 1968, entire). These effects of urbanization can lower fish species richness and density, leading to predictable changes in species composition, and these changes can accrue rapidly (less than 10 years) and are detectable at low levels (approximately 5 to 10 percent urbanization) (Walters *et al.* 2005, p. 1). In 2016, 80 percent of the western and “Ouachita” fanshell MUs had 5 percent or greater urban land use, but all were less than 10 percent (Service 2020, Appendix I–A).

The amount of impervious surface and riparian forest cover influences stream hydrology and water quality (Brabec *et al.* 2002, pp. 505–507). Riparian forest cover intercepts and moderates the timing of runoff, buffers temperature extremes, filters pollutants in runoff, provides woody debris to stream channels that enhances aquatic

food webs, and stabilizes excessive erosion. Furthermore, the removal of riparian trees in forested watersheds has a strong influence on stream invertebrate communities (Wallace *et al.* 1997, entire). In 2016, forest cover ranged from 70 to 76 percent in “Ouachita” fanshell MUs and 12 to 77 percent in western fanshell MUs (Service 2020, Appendix I–A).

Agricultural practices, such as livestock grazing and tilling on land adjacent to streams, can lead to soil erosion and subsequent runoff of fine sediments, nutrients, and pesticides (for example, Schulz and Liess 1999, p. 155). Watersheds with the most habitat converted to farmland often have the greatest levels of mussel richness decline (Poole and Downing 2004, p. 123). In 2016, agricultural land use ranged from 5 to 13 percent in “Ouachita” fanshell MUs and 17 to 68 percent in western fanshell MUs, and decreased in all MUs for both species from 2011 to 2016 (Service 2020, Appendix I–A).

Roads adversely affect watershed integrity by intercepting, concentrating, and diverting water. Roads directly affect natural sediment and hydrologic regimes by altering stream flow, sediment loading, sediment transport and deposition, channel morphology, channel stability, substrate composition, stream temperature, water quality, and riparian condition (Lee *et al.* 1997, pp. 1102–1104). Hydrologic effects are sensitive to road density, with increased peak flows evident at road densities of 2 to 3 kilometers (km)/square kilometers (km²) (Forman and Alexander 1998, p. 223). In 2016, unpaved road density in all the western and “Ouachita” fanshell mussel MUs were 1.6 km/km² or less.

Habitat Fragmentation

Hydrologic and geomorphic processes directly relate to habitat extent. The number and distribution of habitat patches and their connectivity influence species population health. Historically, the two fanshell species likely occurred throughout the river basins described in the SSA (Service 2020, pp. 21–31). Large-scale reductions in mussel diversity and abundance are largely due to habitat changes caused by impoundments (Neves *et al.* 1997, p. 63). The number of impoundments in “Ouachita” fanshell MUs ranges from 3 to 51, and in western fanshell MUs ranges from 4 to 73.

Effects of Climate Change

We examined information on the anticipated effects of climate change, including changes to water temperatures and precipitation patterns. In its 5th

Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) adopted “representative concentration pathways” (RCPs), which are greenhouse gas concentration trajectories, to describe potential future climate outcomes, depending on the amount of greenhouse gases that are emitted in the future (IPCC 2014, pp. 126–127). Under RCP4.5 and RCP8.5, the seasonal averages of 30 Coupled Model Intercomparison Project 5 (CMIP5) models from 1950 to 2100 indicate warming air temperatures in the Lower Mississippi River region, with a central tendency of less than 2 inches change in precipitation (Alder and Hostetler 2013, pp. 2–3). We expect changes in stream temperatures to reflect changes in air temperature, at a rate of an approximately 0.6–0.8 °C increase in stream water temperature for every 1 °C increase in air temperature (Morrill *et al.* 2005, pp. 1–2, 15). These water temperature changes will have implications for temperature-dependent water quality parameters (such as dissolved oxygen and ammonia toxicity), spawning, and physiological effects to thermally sensitive species.

Future increases in the frequency and severity of both extreme drought and extreme rainfall are expected to transform many ecosystems in the Southeast, including Arkansas (Carter *et al.* 2018, pp. 743–808). Mussels are highly sensitive to secondary effects of drought (for example, water temperature, etc.), but their ability to withstand severe drought is highly dependent on where they occur (Haag and Warren 2008, p. 1165) and sufficient time between sequential drought events for mussel populations to recover (Vaughn *et al.* 2015, pp. 1297–1298).

We also considered whether the threats discussed above may be exacerbated by small population size (or low condition). Although there are populations in low condition in all the basins in which the two species occur, none of the basins have seen their populations reduced to one or two populations in low condition.

Regulatory Mechanisms

State Protections

The western fanshell is listed as State endangered with designated critical habitats under the Kansas Nongame and Endangered Species Conservation Act. Under State law, any time an eligible project is proposed that will impact the species’ preferred habitats within its probable range in Kansas, the project sponsor must contact the Kansas Department of Wildlife, Parks and

Tourism, regarding potential permit requirements. The western fanshell and “Ouachita” fanshell do not receive protection under State law in any other States.

Other Regulatory Mechanisms

The U.S. Forest Service (2005, p. 58) established a wildlife and fish habitat road density objective of less than or equal to 1.6 km/2.6 km² on the Ouachita National Forest in west-central Arkansas, which includes the Ouachita Headwaters and Caddo MUs for “Ouachita” Fanshell. The Arkansas Unpaved Roads Program, authorized by Act 898 of the 90th General Assembly in 2005, establishes a proactive, incentive-based management program that results in utilization of best management practices on unpaved roads to minimize erosion and maintain and improve the health of priority lakes and rivers (TNC 2017, entire), including those where both fanshell mussel species occur.

Current Conditions

Current (and future) conditions are described using categories that estimate the overall condition (resiliency) of the western fanshell and “Ouachita” fanshell populations. These categories are based on an evaluation of multiple population and habitat factors (Service 2020, pp. 16–19).

Given that both of the fanshells’ ranges include medium to large rivers with some populations fragmented by dams and creation of navigation channels, we delineated separate populations for each watershed through which these streams flow (if there was an occurrence record for the stream in that watershed), based on the hydrologic unit code (HUC) (Seaber *et al.* 1987, entire; U.S. Geological Survey 2018, entire) at the fourth of six levels (that is, the HUC–8 watershed), and termed these “management units” (MUs). MUs represent areas with one or more populations capable of dispersal and interaction. As a result, some watersheds have been combined into one management unit because of a lack of dispersal barriers and some divided into multiple management units. MUs were identified as most appropriate for assessing population-level resiliency because the stream level was determined to be too coarse of a scale to estimate the condition factors influencing resiliency (Service 2020, p. 16). We defined a MU as currently extant if it contains live or recent dead individuals observed in surveys from 2000 to the present (Service 2020, p. 21).

To evaluate the species' genetic and ecological diversity (representation) in the absence of species-specific genetic information, we considered the extent and variability of environmental conditions within the two species' geographic ranges. Based on the best available data, we identified representation units at the HUC-4 watershed level, which is the second HUC level and covers a larger area than HUC-8.

Western Fanshell

The western fanshell's current range includes a total of 11 MUs across three HUC-4 units: Neosho-Verdigris (2 MUs), Lower Mississippi-St. Francis (3 MUs), and Upper White (6 MUs) river drainages of Arkansas, Missouri, Kansas, and Oklahoma. Historically, the western fanshell occurred in another 14 MUs and is presumed extirpated from the Lower Arkansas (HUC-4) river drainage. Of the current MUs, three (27 percent) are estimated to be highly resilient, three (27 percent) are estimated to be moderately resilient, and five (46 percent) are estimated to have low resiliency (Service 2020, pp. 36-46). The habitat conditions across the 11 extant populations are medium to high (Service 2020, p. 41).

"Ouachita" Fanshell

The "Ouachita" fanshell currently occurs in 4 MUs within portions of the Ouachita River basin (HUC-4) in Arkansas. One population is presumed extirpated. Of the current MUs, one (25 percent) is estimated to be highly resilient, one (25 percent) is estimated to be moderately resilient, and two (50 percent) are estimated to have low resiliency (Service 2020, pp. 46-50). The habitat conditions across the 4 extant populations are medium to high (Service 2020, p. 47).

Future Conditions

We forecasted the western fanshell's and "Ouachita" fanshell's responses to plausible future scenarios of environmental conditions. The future scenarios project the threats into the future and consider the impacts those threats could have on the viability of the western fanshell and "Ouachita" fanshell. We apply the concepts of resiliency, redundancy, and representation to the future scenarios to describe possible future conditions of the western fanshell and "Ouachita" fanshell. The scenarios described in the SSA report represent only two possible future conditions for each species. Uncertainty is inherent in any projection of future condition, so we must consider plausible scenarios to

make our determinations. When assessing the future, viability is not a specific state, but rather a continuous measure of the likelihood that the species will sustain populations over time.

In the SSA, we considered two future scenarios. Scenario 1 assesses the species' responses to moderate increases in stressors influencing the western fanshell and "Ouachita" fanshell populations, although current conservation practices would remain in place. Scenario 2 assesses the species' responses to severe increases in stressors. Due to a lack of resolution of the available data, we were unable to distinguish any meaningful difference between a moderate increase in stressors and a moderate decrease in stressors. As a result, we limited the future forecasts to these two scenarios, which we projected over a 40-year period. We restricted our evaluation to 40 years primarily due to limitations projecting non-modeled, extrapolated future conditions for water quality, road density, and habitat fragmentation. A full description of the future scenarios and our methods is available in the SSA report (Service 2020, pp. 64-69).

Under Scenario 1, populations of both fanshell species are projected to decline in resiliency and redundancy over time as conditions moderately decline from current conditions. For western fanshell, we project five (45 percent) of the currently extant MUs to become extirpated. Of the remaining six populations, four (67 percent) would be in medium condition, and two (33 percent) in low condition, with no MUs in high condition. For "Ouachita" fanshell, we project two (50 percent) of the currently extant MUs to become extirpated. Of the remaining two populations, one (50 percent) would be in medium condition, and one (50 percent) in low condition, with no MUs in high condition. All of the extant HUC-4 river basins would remain occupied for both species.

While our projections under Scenario 2 do not anticipate additional extirpations from those observed under Scenario 1, we expect all remaining populations of both species to be in low condition in 40 years. All extant HUC-4 river basins would remain occupied for both species.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize

the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Western Fanshell and "Ouachita" Fanshell Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an "endangered species" or a "threatened species." The Act defines "endangered species" as a species in danger of extinction throughout all or a significant portion of its range, and "threatened species" as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of "endangered species" or "threatened species" because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Western Fanshell—Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determined that the western fanshell has experienced a reduction in populations/management units from historical conditions. However, the species still ranges over three of the four major drainages (HUC-4 representation units) in which it historically occurred. Eleven of 27 historical MUs are extant. Of those 11, 3 MUs are currently in high condition, 3 in medium condition, and 5 in low condition. The majority (54 percent) of the MUs are in high or medium condition. There is at least one MU in high condition in each of the 3 extant representation units. With 11 extant

MUs across three HUC-4s, the species currently retains redundancy to withstand and survive potential catastrophic events, although there is no imminent catastrophic threat. Therefore, we determined that the species is not in danger of extinction throughout all of its range.

However, the following threats currently acting on the western fanshell will likely continue into the foreseeable future and decrease the condition of the species further over time: Habitat loss and degradation from siltation, water quality degradation, altered flow, landscape changes, and habitat fragmentation (Factor A). These threats are reasonably expected to be exacerbated by continued urbanization, and threats of water quality (temperature) and flow are especially exacerbated by climate change (Factor E). These threats will continue to impact the species into the foreseeable future, and the existing regulatory mechanisms (Factor D) are not adequately reducing the impact of these threats on the species. The best available data do not indicate that the western fanshell is currently impacted at the population level by overutilization for commercial, recreational, scientific, or educational purposes (Factor B) or predation or disease (Factor C), nor do the best available data indicate that the species will be impacted by these factors in the future.

Given the projection of threats 40 years into the future, the number of western fanshell populations will decline with the projected loss of five MUs, reducing the species' redundancy. Across the plausible future scenarios, resiliency also declines with zero to four populations projected to be in medium condition and two to six populations in low condition. No populations are projected to be in high condition in the foreseeable future. Representation is projected to remain across the range, but the considerable loss of redundancy and resiliency makes the species likely to become in danger of extinction in the foreseeable future throughout its range. Thus, after assessing the best available information, we conclude that the western fanshell is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Western Fanshell—Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center*

for Biological Diversity v. Everson, 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the Final Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act’s Definitions of “Endangered Species” and “Threatened Species” (79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species’ range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species’ range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the “significance” question or the “status” question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species’ range.

Following the court’s holding in *Center for Biological Diversity*, we now consider whether there are any significant portions of the species’ range where the species is in danger of extinction now (that is, endangered). In undertaking this analysis for western fanshell, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

For western fanshell, we considered whether the threats are geographically concentrated in any portion of the species’ range at a biologically meaningful scale. We examined the following threats: Water quality degradation, altered flow, landscape changes, and habitat fragmentation, including cumulative effects. We evaluated multiple factors—including various water quality parameters, land cover data, road density, and barriers—that contribute to these primary threats. These habitat factors are in a medium to high condition across the species’ range. Overall, we found that threats are acting similarly within the occupied river basins across the species’ range. We found no concentration of threats in any portion of the western fanshell’s range at a biologically meaningful scale. Thus, there are no portions of the species’ range where the species has a different status from its rangewide status.

Therefore, no portion of the species’ range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts’ holdings in *Desert Survivors v. Department of the Interior*, No. 16-cv-01165-JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Western Fanshell—Determination of Status

Our review of the best available scientific and commercial information indicates that the western fanshell meets the Act’s definition of a threatened species. Therefore, we propose to list the western fanshell as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

“Ouachita” Fanshell—Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we determined that the “Ouachita” fanshell has experienced a reduction in resiliency and redundancy from historical conditions. The species is extant in four MUs within one major drainage (HUC-4 representation unit). The species historically occurred in Bayou Bartholomew in Louisiana. Of the four extant MUs, one is currently in high condition, one in medium condition, and two in low condition. The species appears to be endemic to the Ouachita River basin. Although the species is known from only one representation unit, half of the extant populations are in high or medium condition. The species currently retains redundancy to withstand and survive potential catastrophic events, although there is no imminent catastrophic threat. Therefore, we determined that the species is not in danger of extinction throughout all of its range.

The following threats currently acting on the “Ouachita” fanshell will likely continue into the foreseeable future and decrease the condition of the species further over time: Habitat loss and degradation from siltation, water quality degradation, altered flow, landscape changes, and habitat fragmentation (Factor A). These threats are reasonably expected to be exacerbated by continued urbanization, and threats of water quality (temperature) and flow are especially exacerbated by climate change (Factor E). These threats will

continue to impact the species into the foreseeable future, and the existing regulatory mechanisms (Factor D) are not adequately reducing the impact of these threats on the species. The best available data do not indicate that the “Ouachita” fanshell is currently impacted at the population level by overutilization for commercial, recreational, scientific, or educational purposes (Factor B) or predation or disease (Factor C), nor do the best available data indicate that the species will be impacted by these factors in the future.

Given the projection of threats 40 years into the future, the number of “Ouachita” fanshell populations will decline with the projected loss of two MUs, reducing the species’ redundancy. Resiliency also declines with three to four populations projected to be in low condition and zero to one population(s) in medium condition. No populations are projected to be in high condition in the foreseeable future. As the species occurs in only the Ouachita River basin, representation is projected to remain, but the considerable loss of redundancy and resiliency makes the species likely to become in danger of extinction in the foreseeable future throughout its range. Thus, after assessing the best available information, we conclude that the “Ouachita” fanshell is likely to become in danger of extinction within the foreseeable future throughout all of its range.

“Ouachita” Fanshell—Status Throughout a Significant Portion of Its Range

See above, under *Western Fanshell—Status Throughout a Significant Portion of Its Range*, for a description of our evaluation methods and our policy application.

In undertaking the analysis for the “Ouachita” fanshell, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered. We examined the following threats: Water quality degradation, altered flow, landscape changes, and habitat fragmentation, including cumulative effects. We evaluated multiple factors—including various water quality parameters, land cover data, road density, and barriers—that contribute to these primary threats. These habitat factors are in a medium to high condition across the species’ range. Overall, we found that threats are acting similarly across the species’ range. We found no concentration of threats in any

portion of the “Ouachita” fanshell’s range at a biologically meaningful scale. Thus, there are no portions of the species’ range where the species has a different status from its rangewide status. Therefore, no portion of the species’ range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts’ holdings in *Desert Survivors v. Department of the Interior*, No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

“Ouachita” Fanshell—Determination of Status

Our review of the best available scientific and commercial information indicates that the “Ouachita” fanshell meets the Act’s definition of a threatened species. Therefore, we propose to list the “Ouachita” fanshell as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species’ decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a

point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (“downlisting”) or removal from protected status (“delisting”), and as a benchmark for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (<http://www.fws.gov/endangered>), or from our Arkansas Ecological Services Field Office for “Ouachita” fanshell or Missouri Ecological Services Field Office for western fanshell (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Arkansas, Kansas, Missouri, and Oklahoma would be eligible for Federal funds to implement management actions that promote the protection or recovery of the western fanshell and the States of Arkansas and

Louisiana would be eligible for Federal funds to implement management actions that promote the protection or recovery of the “Ouachita” fanshell. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although the western fanshell and “Ouachita” fanshell are only proposed for listing under the Act at this time, please let us know if you are interested in participating in conservation efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species’ habitat that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to, activities authorized, funded, or carried out by the following agencies:

(1) U.S. Army Corps of Engineers (channel dredging and maintenance; dam projects including flood control, navigation, hydropower, bridge projects, stream restoration, and Clean Water Act permitting).

(2) U.S. Department of Agriculture, including the Natural Resources Conservation Service and Farm Service Agency (technical and financial assistance for projects) and the Forest Service (aquatic habitat restoration, fire management plans, fuel reduction treatments, forest plans, mining permits).

(3) U.S. Department of Energy (renewable and alternative energy projects).

(4) Federal Energy Regulatory Commission (interstate pipeline construction and maintenance, dam relicensing, hydrokinetics).

(5) U.S. Department of Transportation (highway and bridge construction and maintenance).

(6) U.S. Fish and Wildlife Service (issuance of section 10 permits for enhancement of survival, habitat conservation plans, and safe harbor agreements; National Wildlife Refuge planning and refuge activities; Partners for Fish and Wildlife program projects benefiting these species or other listed species; Wildlife and Sportfish Restoration program sportfish stocking).

(7) Environmental Protection Agency (water quality criteria, permitting).

(8) Office of Surface Mining (land resource management plans, mining permits, oil and natural gas permits, renewable energy development).

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like “necessary and advisable” demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case

of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary’s discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Asea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, “once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him [or her] with regard to the permitted activities for those species. He [or she] may, for example, permit taking, but not importation of such species, or he [or she] may choose to forbid both taking and importation but allow the transportation of such species” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address the western fanshell’s and “Ouachita” fanshell’s specific threats and conservation needs. Although the statute does not require us to make a “necessary and advisable” finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the western fanshell and “Ouachita” fanshell. As discussed above under Summary of Biological Status and Threats, we have concluded that the western fanshell and “Ouachita” fanshell are likely to become in danger of extinction within the foreseeable future primarily due to habitat loss and degradation from siltation, water and sediment quality degradation, changes to flow, and impoundments. These threats, which

are expected to be exacerbated by continued urbanization and the effects of climate change, were central to our assessment of the future viability of the western fanshell and “Ouachita” fanshell. The provisions of this proposed 4(d) rule would promote conservation of the western fanshell and “Ouachita” fanshell by encouraging management of the landscape in ways that meet both land management considerations and the conservation needs of the western fanshell and “Ouachita” fanshell. The provisions of this proposed rule are one of many tools that we would use to promote the conservation of the western fanshell and “Ouachita” fanshell. This proposed 4(d) rule would apply only if and when we make final the listing of the western fanshell and “Ouachita” fanshell as threatened species.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

This obligation does not change in any way for a threatened species with a species-specific 4(d) rule. Actions that result in a determination by a Federal agency of “not likely to adversely

affect” continue to require the Service’s written concurrence and actions that are “likely to adversely affect” a species require formal consultation and the formulation of a biological opinion.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the western fanshell and “Ouachita” fanshell by prohibiting the following activities, except as otherwise authorized or permitted: Importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

As discussed above under Summary of Biological Status and Threats, multiple factors are affecting the status of western fanshell and “Ouachita” fanshell. A range of activities have the potential to affect these species, including, for example, habitat loss and degradation from siltation, water and sediment quality degradation, changes to flow, and impoundments. These threats, which are expected to be exacerbated by continued urbanization and the effects of climate change, were central to our assessment of the future viability of western fanshell and “Ouachita” fanshell. Therefore, we prohibit actions resulting in the incidental take of western fanshell and “Ouachita” fanshell by altering or degrading the habitat. Regulating incidental take resulting from these activities would help preserve the species’ remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other stressors.

Under the Act, “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally.

The proposed 4(d) rule would also provide for the conservation of the species by allowing exceptions to actions and activities that, while they may have some minimal level of disturbance to the western fanshell and “Ouachita” fanshell, are not expected to negatively affect the species’ conservation and recovery efforts. The proposed exceptions to these prohibitions include: (1) Channel and bank restoration projects; (2) silviculture and forest management that implements best management practices; and (3)

transportation projects that avoid instream disturbance in waters occupied by the species.

The first exception is for incidental take resulting from channel and bank restoration projects for creation of natural, physically stable, ecologically functioning streams, taking into consideration connectivity with floodplain and groundwater aquifers. This exception includes a requirement that bank restoration projects require planting appropriate native vegetation, including woody species appropriate for the region and habitat. We also propose language that would require surveys and relocation prior to commencement of restoration actions (and, if applicable, monitoring after relocation) for western fanshell and “Ouachita” fanshell that would otherwise be negatively affected by the actions. Actions related to restoration activities that would negatively affect western fanshell and “Ouachita” fanshell include: Individual mussels being removed, dislodged, crushed and/or killed by heavy equipment operations and rip-rap placement; removal, destruction and/or replacement of habitat; increased turbidity from streambed disturbance; and alterations to flow and turbidity from permanent (weirs) or temporary (causeways) structures needed for construction.

The second exception is for incidental take resulting from silviculture and forest management activities that use State-approved best management practices to protect water and sediment quality and stream and riparian habitat. Best management practices are designed to reduce sedimentation, erosion, and bank destruction, thereby protecting instream habitat for these species.

The third exception is for incidental take resulting from transportation projects that do not include activities that disturb instream habitat. Bridge designs that include spanning the stream and avoiding stream bank disturbance reduce sedimentation and erosion, thereby protecting instream habitat for these species.

We reiterate that these actions and activities may have some minimal level of take of the western fanshell and “Ouachita” fanshell, but any such take is expected to be rare and insignificant, and is not expected to negatively impact the species’ conservation and recovery efforts. Rather, we expect they would have a net beneficial effect on the species. Across the species’ range, instream habitats have been degraded physically by sedimentation and by direct and indirect channel disturbance. The habitat restoration activities in the proposed 4(d) rule are intended to

improve habitat conditions for the species in the long term.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits for threatened wildlife are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act. In addition, we are considering, but have not specifically proposed in this document, an exception from permitting requirements for individuals conducting presence/absence surveys, studies to document habitat use, population monitoring, and evaluations of potential impacts to the fanshells, provided the individual holds a valid scientific collecting permit for mussels from the appropriate State agency. If we conclude that this measure would provide for the conservation of the species, we may include a provision in the final 4(d) rule. We specifically request comments on this provision we are considering.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the western fanshell and "Ouachita" fanshell that may result in otherwise prohibited take without additional authorization.

Nothing in this proposed 4(d) rule would change in any way the recovery

planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the western fanshell and "Ouachita" fanshell. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

III. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (that is, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (for example, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals). Additionally, our regulations at 50 CFR 424.02 define the word "habitat," for the purposes of designating critical habitat only, as the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the

point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific

features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The implementing regulations at 50 CFR 424.12(b)(2) further delineate unoccupied critical habitat by setting out three specific parameters: (1) When designating critical habitat, the Secretary will first evaluate areas occupied by the species; (2) the Secretary will consider unoccupied areas to be essential only where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species; and (3) for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat,

our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

As the regulatory definition of "habitat" reflects (50 CFR 424.02), habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of these species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an

endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed earlier in this document, there is currently no imminent threat of collection or vandalism identified under Factor B for these species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA and proposed listing determination for the western fanshell and "Ouachita" fanshell, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the western fanshell and "Ouachita" fanshell and that those threats can be addressed in some way by section 7(a)(2) consultation measures. These species occur wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because the Secretary has not identified other circumstances for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for the western fanshell and "Ouachita" fanshell.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the western fanshell and "Ouachita" fanshell is determinable. Our regulations at 50 CFR 424.12(a)(2) state

that critical habitat is not determinable when one or both of the following situations exist:

- (i) Data sufficient to perform required analyses are lacking, or
- (ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of “critical habitat.”

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the western fanshell and “Ouachita” fanshell.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to support the life-

history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics

include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

As described above under Summary of Biological Status and Threats, western fanshell and “Ouachita” fanshell occur in large creeks and rivers. Occasional or regular interaction among individuals in different river reaches not interrupted by a barrier likely occurs, but in general, interaction is strongly influenced by habitat fragmentation and distance between occupied river or stream reaches. Once released from their fish host, freshwater mussels are benthic (bottom-dwelling), generally sedentary aquatic organisms and closely associated with appropriate habitat patches within a river or stream.

We derive the specific physical or biological features essential to the western fanshell and “Ouachita” fanshell from studies of these species’ (or appropriate surrogate species’) habitat, ecology, and life history. The primary habitat elements that influence resiliency of the western fanshell and “Ouachita” fanshell include water quality, water quantity, substrate, habitat connectivity, and the presence of host fish species to ensure recruitment. These features are also described above as species needs under Summary of Biological Status and Threats, and a full description is available in the SSA report; the individuals’ needs are summarized below in Table 1.

TABLE 1—REQUIREMENTS FOR LIFE STAGES OF WESTERN FANSHELL AND “OUACHITA” FANSHELL

Life stage	Resource needs—habitat requirements	References
All Life Stages	<p><i>Water Quality:</i> Naturally clean, high quality water with little or no harmful pollutants (that is, pollutants occur below tolerance limits of mussels, fish hosts, prey). The values below are based on the best available science and assume mussels respond to average values of a constituent over time (acute or chronic exposure).</p> <ul style="list-style-type: none"> > Dissolved oxygen >3 milligrams per liter (mg/L) > Low salinity/total dissolved solids > Low nutrient concentrations <ul style="list-style-type: none"> > Total ammonia nitrogen <0.3–1.0 mg/L at pH 8.0 & 25 °C > Nitrate <2.0 mg/L > Nitrite <55.8 mg/L > Low concentrations of metals <ul style="list-style-type: none"> > Cadmium <0.014 mg/L at 50 mg/L calcium carbonate (CaCO₃) hardness > Zinc <0.120 mg/L at 50 mg/L CaCO₃ hardness > Lead <0.205 mg/L at 50 mg/L CaCO₃ hardness > Copper <0.005 mg/L in moderately hard water > Natural, unaltered ambient water temperature generally <27 °C <p><i>Water Quantity:</i> Flowing water in sufficient quantity to support the life-history requirements of mussels and their fish hosts.</p>	<p>Allen <i>et al.</i> 2007, pp. 80–85; Augspurger <i>et al.</i> 2003, p. 2569; Bringolf <i>et al.</i> 2007a, p. 2094; 2007b, p. 2086; Cope <i>et al.</i> 2008, p. 455; Fuller 1974, pp. 240–246; Gillis <i>et al.</i> 2008, pp. 140–141; Gray <i>et al.</i> 2002, pp. 155–156; Kolpin <i>et al.</i> 2002, pp. 1208–1210; Spooner and Vaughn 2008, p. 311; Steingraeber <i>et al.</i> 2007, p. 297; Wang <i>et al.</i> 2007a, 2007b, 2010, 2013, entire.</p> <p>Galbraith and Vaughn 2009, p. 46; Allen and Vaughn 2010, p. 390; Peterson <i>et al.</i> 2011, p. 115; Daraio <i>et al.</i> 2010, p. 838.</p>

TABLE 1—REQUIREMENTS FOR LIFE STAGES OF WESTERN FANSELL AND “OUACHITA” FANSELL—Continued

Life stage	Resource needs—habitat requirements	References
Gamete (sperm, egg development, fertilization). Glochidia	<ul style="list-style-type: none"> ➤ Sexually mature males and females with appropriate water temperatures for spawning, fertilization, and brooding. ➤ Presence of fish hosts (of appropriate species) with sufficient flow to allow attachment, encystment, relocation, excystment, and dispersal of glochidia. 	Haag 2012, pp. 38–39; Galbraith and Vaughn 2009, pp. 45–46; Barnhart <i>et al.</i> 2008, p. 372.
Juvenile, sub-adult, and adult (from excystment to maturity).	<ul style="list-style-type: none"> ➤ Stable substrate comprised of mixed sand, gravel and cobble, and appropriate for burrowing, pedal feeding, and survival. ➤ Appropriate food sources (phytoplankton, zooplankton, protozoans, detritus, dissolved organic matter) in adequate supply. ➤ Presence and abundance of fish hosts available for recruitment. 	Allen and Vaughn 2010, pp. 384–385; Haag 2012, pp. 26–42; Eckert 2003, pp. 18–19, 33.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the western fanshell and “Ouachita” fanshell from studies of the species’ habitat, ecology, and life history as described below. Additional information can be found in chapter 2 of the SSA report (Service 2020, pp. 9–15), which is available on <http://www.regulations.gov> under Docket No. FWS–R3–ES–2021–0061. We have determined that the following physical or biological features are essential to the conservation of the western fanshell and “Ouachita” fanshell:

(1) Adequate flows, or a hydrologic flow regime (magnitude, timing, frequency, duration, rate of change, and overall seasonality of discharge over time), necessary to maintain benthic habitats where the species are found and to maintain stream connectivity, specifically providing for the exchange of nutrients and sediment for maintenance of the mussels’ and fish hosts’ habitat and food availability, maintenance of spawning habitat for native host fishes, and the ability for newly transformed juveniles to settle and become established in their habitats. Adequate flows ensure delivery of oxygen, enable reproduction, deliver food to filter-feeding mussels, and reduce contaminants and fine sediments from interstitial spaces.

(2) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (that is, channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater mussel and native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel and coarse sand substrates).

(3) Water and sediment quality necessary to sustain natural physiological processes for normal

behavior, growth, and viability of all life stages, including, but not limited to: Dissolved oxygen (generally above 3 parts per million (ppm)) and water temperature (generally below 80 degrees Fahrenheit (°F) (27 degrees Celsius (°C))). Additionally, water and sediment should be low in ammonia (generally below 1.0 ppm total ammonia-nitrogen) and heavy metals, and lack excessive total suspended solids and other pollutants.

(4) The presence and abundance of fish hosts necessary for recruitment of the western fanshell and “Ouachita” fanshell, including logperch (*Percina caprodes*), rainbow darter (*Etheostoma caeruleum*), slenderhead darter (*Percina phoxocephala*), fantail darter (*Etheostoma flabellare*), or orangebelly darter (*Etheostoma radiosum*).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features essential to the conservation of the species and which may require special management considerations or protection.

The features essential to the conservation of the western fanshell and “Ouachita” fanshell may require special management considerations or protections to reduce the following threats: (1) Alteration of the natural flow regime (modifying the natural hydrograph and seasonal flows), including water withdrawals, resulting in flow reduction and available water quantity; (2) urbanization of the landscape, including (but not limited to) land conversion for urban and commercial use, infrastructure (pipelines, roads, bridges, utilities), and urban water uses (resource extraction activities, water supply reservoirs, wastewater treatment, etc.); (3) significant alteration of water quality and nutrient pollution from a variety of activities, such as industrial and

municipal effluents, mining, and agricultural activities; (4) land use activities that remove large areas of forested wetlands and riparian systems; (5) dam construction and culvert and pipe installation that create barriers to movement for the western fanshell and “Ouachita” fanshell, or their host fishes; (6) changes and shifts in seasonal precipitation patterns as a result of climate change; and (7) other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

Management activities that could ameliorate these threats include, but are not limited to: Use of best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; moderation of surface and ground water withdrawals to maintain natural flow regimes; improved stormwater management; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the occupied areas we are proposing to designate as critical habitat contain the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. Special management considerations or protection may be required of the Federal action agency to eliminate, or to reduce to negligible levels, the threats affecting the physical and biological features of each unit.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical

area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

We anticipate that recovery will require conserving the genetic diversity of extant populations across the HUC-4 watersheds within the species' current range and maintaining and, where necessary, improving habitat and habitat connectivity to ensure the long-term viability of western fanshell and "Ouachita" fanshell. We have determined that the currently occupied MUs of western fanshell and "Ouachita" fanshell would maintain each species' resiliency, redundancy, and representation and are sufficient to conserve these two species. Therefore, we are not currently proposing to designate any areas outside the geographical area occupied by the species.

Methodology Used for Selection of Proposed Units

First, we included current populations with high or medium resiliency. These populations show recruitment or varied age class structure and could be used for recovery actions to augment other populations through propagation activities or direct translocations within their basins. We defined a population as "current" if it contains live or recent dead individuals observed in surveys from 2000 to the present (Service 2020, p. 21).

Second, we evaluated spatial representation and redundancy across the species' ranges, to include last remaining population(s) in major river basins.

Third, we examined the overall contribution of populations in low condition and threats to those populations. We considered adjacency and connectivity to high and medium populations, as well as isolated populations with potentially important genetic or adaptive traits, and did not include populations that have potentially low likelihood of recovery due to low abundance and limited distribution or populations currently under high levels of threats.

Sources of data for this proposed critical habitat designation include information from State agencies throughout the species' ranges and numerous survey reports on streams throughout the species' ranges (Service 2020, entire). We have also reviewed available information that pertains to the habitat requirements of these species. Sources of information on habitat requirements include studies conducted at occupied sites and

published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Service 2020, entire).

In summary, for areas within the geographic area occupied by these species at the time of listing, we delineated critical habitat unit boundaries using a precise set of criteria. Specifically, we identified river and stream reaches with observations from 2000 to present. We determined it is reasonable to find these areas occupied, given the variable data associated with timing and frequency of mussel surveys conducted throughout the species' ranges and available State heritage databases, and information supports the likelihood of both species' continued presence in these areas within this timeframe. Specific habitat areas were delineated, based on Natural Heritage Element Occurrences, published reports, and unpublished survey data provided by States. These areas provide habitat for western fanshell and "Ouachita" fanshell populations and are large enough to be self-sustaining over time, despite fluctuations in local conditions. The areas within the proposed units represent continuous river and stream reaches of free-flowing habitat patches capable of sustaining host fishes and allowing for seasonal transport of glochidia, which are essential for reproduction and dispersal of western fanshell and "Ouachita" fanshell. We consider portions of the following rivers and streams to be occupied by these species at the time of proposed listing, and appropriate for critical habitat designation:

(1) Western fanshell—Black River, Fall River, Middle Fork Little Red River, St. Francis River, South Fork Spring River, Spring River, Strawberry River, and Verdigris River.

(2) "Ouachita" fanshell—Little Missouri River, Ouachita River, and Saline River.

When determining proposed critical habitat boundaries, we made every effort to avoid inclusion of developed areas, such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the western fanshell and "Ouachita" fanshell. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as

critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (that is, currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species.

We are proposing to designate as critical habitat nine units for the western fanshell and four units for the "Ouachita" fanshell based on one or more of the physical or biological features being present to support the western fanshell's or "Ouachita" fanshell's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support the western fanshell's and "Ouachita" fanshell's particular use of that habitat.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on <http://www.regulations.gov> at Docket No. FWS-R3-ES-2021-0061 and on our internet sites <https://www.fws.gov/midwest/> for western fanshell and <https://www.fws.gov/southeast/> for "Ouachita" fanshell.

Proposed Critical Habitat Designation

We are proposing to designate approximately 360 river miles (river mi) (579 kilometers (km)) in nine units as critical habitat for western fanshell and approximately 294 river mi (474 km) in four units for "Ouachita" fanshell. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for western fanshell and "Ouachita" fanshell. All units are occupied by their respective species. The nine areas we propose as critical habitat for western fanshell are: (1) Upper Black River, (2) Lower Black/Strawberry River, (3) Fall River, (4)

Middle Fork Little Red River, (5) St. Francis River, (6) South Fork Spring River, (7) Spring River (AR), (8) Spring River (MO/KS), and (9) Verdigris River. The four areas we propose as critical habitat for “Ouachita” fanshell are: (1) Little Missouri River, (2) Ouachita Headwaters, (3) Ouachita River, and (4) Saline River. Tables 2 and 3 show the proposed critical habitat units and the approximate area of each unit.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR WESTERN FANSHELL
[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Adjacent riparian land ownership by type	River miles (kilometers)
WF 1. Upper Black River	Public (Federal, State)	13.7 (22)
	Private	51 (82.1)
WF 2. Lower Black/Strawberry River	Public (State)	10.9 (17.5)
	Private	100.4 (161.6)
WF 3. Fall River	Private	45.5 (73.2)
WF 4. Middle Fork Little Red River	Public (Federal)	3.5 (5.6)
	Private	30.6 (49.2)
WF 5. St. Francis River	Public (Federal, State)	12.6 (20.2)
	Private	36.7 (59.1)
WF 6. South Fork Spring River	Private	13.4 (21.6)
WF 7. Spring River (AR)	Private	14.2 (22.9)
WF 8. Spring River (MO/KS)	Public (State)	1.0 (1.6)
	Private	14.0 (22.5)
WF 9. Verdigris River	Private	12.4 (20)
	Totals	41.7 (67.1)
	Public	
	Private	318.2 (512.1)
	Total	359.9 (579.2)

Note: Area sizes may not sum due to rounding.

TABLE 3—PROPOSED CRITICAL HABITAT UNITS FOR “OUACHITA” FANSHELL
[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Adjacent riparian land ownership by type	River miles (kilometers)
OF 1. Little Missouri River	Private	22.9 (36.9)
	Public (Federal)	2.8 (4.5)
OF 2. Ouachita Headwaters	Private	29.9 (48.1)
	Public (State)	53.5 (86.1)
OF 3. Ouachita River	Private	0.5 (0.8)
OF 4. Saline River	Public (State)	184.8 (297.4)
	Private	
Totals	Public	3.3 (5.3)
	Private	291.1 (468.5)
	Total	294.4 (473.8)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the western fanshell or “Ouachita” fanshell, below.

WF 1: Upper Black River

Unit WF 1 consists of 64.7 river mi (104.1 km) of Black River in Butler and Wayne Counties, Missouri, from Clearwater Dam southwest of Piedmont, Wayne County, extending downstream to Butler County Road 658 crossing southeast of Poplar Bluff, Butler County, and includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 51 river mi (82.1 km; 79 percent) in private ownership and 13.7

river mi (22 km; 21 percent) in public (Federal or State) ownership. Approximately 2.7 miles of the public ownership in this unit are State lands associated with Missouri Department of Conservation’s (MDC) Bradley A. Hammer Memorial Conservation Area, Dan River Access, Hilliard Access, and Stephen J. Sun Conservation Area. Eleven miles are Federal land associated with the U.S. Forest Service’s (USFS) Mark Twain National Forest and U.S. Army Corps of Engineers (USACE) Clearwater Recreation Area. General land use within the adjacent riparian areas of this unit includes forest, agriculture, several State-managed game lands, the town of Mill Spring, and city of Poplar Bluff. Clearwater Dam is

operated by the USACE. Unit WF 1 is occupied by the species and contains all of the physical or biological features essential to the conservation of the species. There is no overlap with any designated critical habitat for other listed species.

Threats identified within the unit include degradation of habitat and water quality from impoundments, channelization, and point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and

habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

WF 2: Lower Black/Strawberry River

Unit WF 2 consists of 111.3 river mi (179.1 km) of Black River and Strawberry River in Independence, Jackson, Lawrence, and Sharp Counties in Arkansas and includes the river channel up to the ordinary high water mark. Black River makes up 54.6 river mi (87.9 km) from the mouth of Spring River northeast of Black Rock, extending downstream to the mouth of Strawberry River northeast of Dowdy, Independence County, Arkansas. Strawberry River makes up 56.7 river mi (91.2 km) from the mouth of Lave Creek north of Evening Shade, Sharp County, extending downstream to the confluence with Black River northeast of Dowdy, Independence County, Arkansas. Riparian lands that border the unit include approximately 100.4 river mi (161.6 km; 90 percent) in private ownership and 10.9 river mi (17.5 km; 10 percent) in public (State) ownership. The public land ownership in this unit is associated with Arkansas Game and Fish Commission's Shirey Bay Rainey Brake Wildlife Management Area on Black River. The Nature Conservancy's Strawberry River Preserve and Ranch on Strawberry River is also in this unit. General land use within this unit includes forest, agriculture, State-managed game lands, the town of Powhatan, and city of Black Rock. Unit WF 2 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 70.3 river mi (113.1 km) of this unit with designated critical habitat for rabbitsfoot (*Quadrula cylindrica cylindrica*) (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include degradation of habitat and water quality from impoundments, channelization, and point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, unpaved roads, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

WF 3: Fall River

Unit WF 3 consists of 45.5 river mi (73.2 km) of Fall River in Greenwood

and Wilson Counties, Kansas, from the Greenwood County Road 33/Merchants Avenue crossing at Fall River, Greenwood County, extending downstream to the U.S. Route 400 crossing west of Neodesha, Wilson County, and includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. General land use within the adjacent riparian areas of this unit includes forest, agriculture, and the city of Fall River. Unit WF 3 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 45.5 river mi (73.2 km) of this unit with designated critical habitat for Neosho mucket (*Lampsilis rafinesqueana*) (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include degradation of habitat and water quality from impoundments and point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, unpaved roads, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

WF 4: Middle Fork Little Red River

Unit WF 4 consists of 34.1 river mi (54.8 km) of Middle Fork Little Red River in Cleburne, Stone, and Van Buren Counties, Arkansas, from the mouth of Linn Creek east of Dennard, Van Buren County, extending downstream to the mouth of Wild Goose Creek north of Fairfield Bay, Cleburne and Van Buren Counties, and includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 30.6 river mi (49.2 km; 90 percent) in private ownership and 3.5 river mi (5.6 km; 10 percent) in public (Federal) ownership. All of the public land ownership in this unit is Federal land associated with the USACE's Greers Ferry Recreation Area. General land use within the adjacent riparian areas of this unit includes forest, pasture, the town of Shirley, and the city of Fairfield Bay. Unit WF 4 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 34.1 river mi (54.9 km) of this unit with designated critical habitat for yellowcheek darter (*Etheostoma moorei*)

(see 50 CFR 17.95(e) and 77 FR 63604, October 16, 2012) and rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include degradation of habitat and water quality from impoundments and point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, unpaved roads, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

WF 5: St. Francis River

Unit WF 5 consists of 49.3 river mi (79.3 km) of St. Francis River in Madison and Wayne Counties, Missouri, extending from the mouth of Wachita Creek west of Fredericktown, Madison County, downstream to the mouth of Big Creek northwest of Silva, Wayne County, and includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 36.7 river mi (59.1 km; 74 percent) in private ownership and 12.6 river mi (20.2 km; 26 percent) in public (Federal or State) ownership. Approximately 2.4 river mi of the public ownership in this unit are State lands associated with MDC's Coldwater Conservation Area, Mill Stream Gardens, and Roselle Access. Ten miles are Federal land associated with the USFS's Mark Twain National Forest. General land use within the adjacent riparian areas of this unit is predominantly forest and pasture with isolated occurrences of developed areas. Unit WF 5 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 49.3 river mi (79.3 km) of this unit with designated critical habitat for rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include degradation of habitat and water quality from impoundments and point and nonpoint source water pollution, including siltation and pollution associated with development, unpaved roads, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment

plants (see Special Management Considerations or Protection, above).

WF 6: South Fork Spring River

Unit WF 6 consists of 13.4 river mi (21.6 km) of South Fork Spring River in Fulton County, Arkansas, from the mouth of Camp Creek east of Salem, Fulton County, extending downstream to the Arkansas Highway 289 crossing northwest of Cherokee Village, Fulton and Sharp Counties, and includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. General land use within the adjacent riparian areas of this unit is predominantly forest, agriculture, and pasture with isolated occurrences of developed areas. Unit WF 6 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is no overlap with any designated critical habitat for other listed species.

Threats identified within the unit include degradation of habitat and water quality from point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, unpaved roads, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

WF 7: Spring River (AR)

Unit WF 7 consists of 14.2 river mi (22.9 km) of Spring River in Lawrence and Randolph Counties, Arkansas, from the mouth of Wells Creek at Ravenden, extending downstream to the mouth of Stennitt Creek southeast of Imboden, Lawrence County, and includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. General land use within the adjacent riparian areas of this unit includes forest, agriculture, pasture, and the towns of Imboden and Ravenden. Unit WF 7 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 14.2 river mi (22.9 km) of this unit with designated critical habitat for rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include degradation of habitat and water quality from point and nonpoint source water pollution, including siltation and

pollution associated with agriculture, development, unpaved roads, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

WF 8: Spring River (MO/KS)

Unit WF 8 consists of 15 river mi (24.1 km) of Spring River in Jasper County, Missouri, and Cherokee County, Kansas, from the mouth of North Fork Spring River east of Asbury, Jasper County, Missouri, extending downstream through Cherokee County, Kansas, to the mouth of Center Creek west of Carl Junction, Jasper County, Missouri, and includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 14.0 river mi (22.5 km; 94 percent) in private ownership and 1.0 river mi (1.6 km; 6 percent) in public (State) ownership. The public ownership of this unit is State land associated with the Kansas Department of Wildlife, Parks and Tourism's Spring River Wildlife Area. General land use within the adjacent riparian areas of this unit is predominantly forest, agriculture, pasture, and State-managed lands with isolated occurrences of developed areas. Unit WF 8 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 15 river mi (24.1 km) of this unit with designated critical habitat for Neosho mucket and rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include degradation of habitat and water quality from point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, unpaved roads, wastewater treatment plants, and historical heavy metal mining. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, wastewater treatment plants, and heavy metal contamination (see Special Management Considerations or Protection, above).

WF 9: Verdigris River

Unit WF 9 consists of 12.4 river mi (20 km) of Verdigris River in Montgomery and Wilson Counties,

Kansas, from the mouth of Fall River south of Neodesha, Wilson County, extending downstream to the mouth of Choteau Creek northeast of Independence, Montgomery County, and includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. General land use within the adjacent riparian areas of this unit is predominantly forest and agriculture with isolated occurrences of developed areas. Unit WF 9 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 12.4 river mi (20 km) of this unit with designated critical habitat for Neosho mucket (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include degradation of habitat and water quality from point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, unpaved roads, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

OF 1: Little Missouri River

Unit OF 1 consists of 22.9 river mi (36.9 km) of Little Missouri River in Clark, Nevada, and Ouachita Counties, Arkansas, from the mouth of Garland Creek northeast of Prescott, Nevada County, downstream to the mouth of Horse Branch north of Red Hill, Ouachita County, and includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. General land use within the adjacent riparian areas of this unit includes forest and agriculture. Unit OF 1 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is no overlap with any designated critical habitat for other listed species.

Threats identified within the unit include dams, impoundments, and point and nonpoint source water pollution, including siltation and pollution associated with a variety of land uses. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss and

fragmentation (see Special Management Considerations or Protection, above).

OF 2: Ouachita Headwaters

Unit OF 2 consists of 32.7 river mi (52.6 km) of Ouachita River in Montgomery and Polk Counties, Arkansas, from the County Road 67 crossing south of Cherry Hill, Polk County, downstream to the U.S. Route 270 crossing southeast of Pencil Bluff, Montgomery County, and includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 29.9 river mi (48.1 km; 91 percent) in private ownership and 2.8 river mi (4.5 km; 9 percent) in public (Federal) ownership. The public ownership in this unit is Federal land associated with USFS's Ouachita National Forest. General land use within the adjacent riparian areas of this unit includes forest and agriculture. Unit OF 2 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is no overlap with any designated critical habitat for other listed species.

Threats identified within the unit include impoundments and point and nonpoint source water pollution, including siltation and pollution associated with a variety of land uses. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss and fragmentation (see Special Management Considerations or Protection, above).

OF 3: Ouachita River

Unit OF 3 consists of 53.5 river mi (86.1 km) of Ouachita River in Clark, Dallas, and Ouachita Counties, Arkansas, from the mouth of L'Eau Fraiss Creek southeast of Arkadelphia, Clark County, downstream to the mouth of Ecore Fabre Bayou north of Camden, Ouachita County, and includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. There is a Wetlands Reserve Program easement within the unit. General land use within the adjacent riparian areas of this unit includes forest, agriculture, and pasture. Unit OF 3 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 22.8 river mi (36.7 km) of this unit with designated critical habitat for rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include dams, impoundments, and

point and nonpoint source water pollution, including siltation and pollution associated with a variety of land uses. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss and fragmentation (see Special Management Considerations or Protection, above).

OF 4: Saline River

Unit OF 4 consists of 185.3 river mi (298.2 km) of Saline River in Ashley, Bradley, Cleveland, Dallas, Drew, Grant, and Saline Counties, Arkansas, from the mouth of North Fork Saline River north of Benton, Saline County, downstream to the mouth of Mill Creek north of Stillions, Ashley County, and includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership and less than 1 percent is in public ownership. The public ownership in this unit is State-owned land associated with Jenkins Ferry State Park. General land use within the adjacent riparian areas of this unit includes forest, agriculture, pasture, the town of Tull, and the city of Benton. Unit OF 4 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 185.3 river mi (298.2 km) of this unit with designated critical habitat for the rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include dams, impoundments, mining, development, and point and nonpoint source water pollution, including siltation and pollution associated with development in the headwaters and a variety of other land uses. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss and fragmentation (see Special Management Considerations or Protection, above).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with

the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

- (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
- (2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

- (1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the "Destruction or Adverse Modification" Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and

provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to, actions that would: (1) Alter the geomorphology of the species' stream and river habitats (for example, instream excavation or dredging, impoundment, channelization, sand and gravel mining, clearing riparian vegetation, and discharge of fill materials); (2) significantly alter the existing flow regime where these species occur (for example, impoundment, urban development, water diversion, water withdrawal, water draw-down, and hydropower generation); (3) significantly alter water chemistry or water quality (for example, hydropower discharges, or the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (nonpoint source)); and (4) significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth (for example, construction projects, gravel and sand mining, oil and gas development, coal mining, livestock grazing, irresponsible logging practices, and other watershed and floodplain disturbances that release sediments or nutrients into the water).

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DoD lands with a completed INRMP are within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat."

The "without critical habitat" scenario represents the baseline for the analysis, which includes the existing

regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (for example, under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (that is, conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the western fanshell and “Ouachita” fanshell (Industrial Economics, Inc. 2021, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (that is, absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a

result of the designation. If the proposed critical habitat designation contains any unoccupied units, the screening analysis assesses whether those units require additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designations for the western fanshell and “Ouachita” fanshell; our DEA is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the western fanshell and “Ouachita” fanshell, first we identified, in the IEM dated February 1, 2021, probable incremental economic impacts associated with the following categories of activities: Instream excavation or dredging; impoundments; channelization; sand and gravel mining; clearing riparian vegetation; discharge of fill materials; urban development; water diversion; water withdrawal; water draw-down; hydropower generation and discharges; release of chemicals, biological pollutants, or heated effluents into surface water or connected ground water at a point source or by dispersed release (nonpoint); construction projects; oil and gas development; coal mining; livestock grazing; timber harvest; and other watershed or floodplain disturbances that release sediments or nutrients into the water. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation

of critical habitat affects only activities conducted, funded, permitted, or authorized by Federal agencies. If we list these species, in areas where the western fanshell or “Ouachita” fanshell are present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If, when we list these species, we also finalize this proposed critical habitat designation, consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (that is, difference between the jeopardy and adverse modification standards) for the western fanshell’s and “Ouachita” fanshell’s critical habitat. Because the designation of critical habitat for western fanshell and “Ouachita” fanshell is proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the western fanshell or “Ouachita” fanshell would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the western fanshell includes nine units, all of which are occupied by the species. Ownership of riparian lands adjacent to the proposed units includes 318.2 river mi (512.1 km; 88 percent) in private ownership and 41.7 river mi (67.1 km; 12 percent) in public (Federal or State) ownership. The proposed critical habitat designation for the “Ouachita” fanshell includes four units, all of which are occupied by the species. Ownership of riparian lands

adjacent to the proposed units includes 291.1 river mi (468.5 km; 99 percent) in private ownership and 3.3 river mi (5.3 km; 1 percent) in public (Federal or State) ownership.

Total incremental costs of critical habitat designation for the western fanshell and “Ouachita” fanshell are not expected to exceed \$79,000 (2021 dollars) per year. The costs are reflective of: (1) All proposed units are considered occupied, (2) project modifications requested to avoid adverse modification are likely to be the same as those recommended to avoid jeopardy in occupied habitat for these species, and (3) the proposed designations receive baseline protection from the presence of critical habitat for co-occurring listed mussel species with similar habitat needs in 60 percent of the proposed western fanshell critical habitat and in 71 percent of the proposed “Ouachita” fanshell critical habitat. Because consultation would be required as a result of the listing of the western fanshell and “Ouachita” fanshell and is already required in some of these areas as a result of the presence of other listed species and critical habitats, the economic costs of the critical habitat designation would likely be primarily limited to additional administrative efforts to consider adverse modification for these two species in section 7 consultations.

Based on the consultation history regarding historical projects and activities overlapping the proposed critical habitat area for the western fanshell, the number of future consultations, including technical assistance efforts, is likely to be no more than 23 per year across all nine units. Based on the consultation history regarding historical projects and activities overlapping the proposed critical habitat area for the “Ouachita” fanshell, the number of future consultations, including technical assistance efforts, is likely to be no more than 15 per year across all four units. Overall, transportation and utilities activities are expected to result in the largest portion of consultations for both the western and “Ouachita” fanshells and, therefore, incur the highest costs. The geographic distribution of future section 7 consultations and associated costs are likely to be most heavily concentrated in western fanshell proposed Unit 2 and “Ouachita” fanshell proposed Unit 4. However, even assuming consultation activity increases substantially, incremental administrative costs are still likely to remain well under \$100 million per year.

We are soliciting data and comments from the public on the DEA discussed above, as well as on all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90. If we receive credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion, we will conduct an exclusion analysis for the relevant area or areas. We may also exercise the discretion to evaluate any other particular areas for possible exclusion. Furthermore, when we conduct an exclusion analysis based on impacts identified by experts in, or sources with firsthand knowledge about, impacts that are outside the scope of the Service’s expertise, we will give weight to those impacts consistent with the expert or firsthand information unless we have rebutting information. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of either species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (for example, a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of “critical habitat.” However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i), because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from

designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides credible information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

Under section 4(b)(2) of the Act, we also consider whether a national-security or homeland-security impact might exist on lands not owned or managed by DoD or DHS. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for western fanshell and “Ouachita” fanshell are not owned or managed by the DoD or DHS. Therefore, we anticipate no impact on national security. However, if through the public comment period we receive credible information regarding impacts on national security or homeland security from designating particular areas as critical habitat, then as part of

developing the final designation of critical habitat, we will conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. Other relevant impacts may include, but are not limited to, impacts to Tribes, States, local governments, public health and safety, community interests, the environment (such as increased risk of wildfire or pest and invasive species management), Federal lands, and conservation plans, agreements, or partnerships. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, public-health, community-interest, environmental, or social impacts that might occur because of the designation.

We have not identified any areas to consider for exclusion from critical habitat based on other relevant impacts. However, during the development of a final designation, we will consider all information currently available or received during the public comment period. If we receive credible information regarding the existence of a meaningful impact supporting a benefit of excluding any areas, we will undertake an exclusion analysis and determine whether those areas should be excluded from the final critical habitat designation under the authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90. We may also exercise the discretion to undertake exclusion analyses for other areas as well, and we will describe all of our exclusion analyses as part of a final critical habitat determination.

Summary of Exclusions Considered Under 4(b)(2) of the Act

At this time, we are not considering any exclusions from the proposed designation based on economic impacts, national security impacts, or other relevant impacts—such as partnerships, management, or protection afforded by cooperative management efforts—under section 4(b)(2) of the Act. In preparing this proposal, we have determined that no HCPs or other management plans for western fanshell or “Ouachita” fanshell currently exist, and the proposed designation does not include any Tribal lands or trust resources. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation and thus, as described above, we are not considering excluding any particular areas on the basis of the presence of conservation agreements or impacts to trust resources.

During the development of a final designation, we will consider any additional information received through the public comment period regarding other relevant impacts to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90.

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.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory

Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less

than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designations. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designations will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designations would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designations would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Facilities that provide energy supply, distribution, or use occur within some units of the proposed critical habitat designations (for example, dams, pipelines) and may potentially be affected. We determined that consultations, technical assistance, and requests for species lists may be necessary in some instances. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent

Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for western fanshell and “Ouachita” fanshell in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal

funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for western fanshell and “Ouachita” fanshell, and it concludes that, if adopted, these designations of critical habitat would not pose significant takings implications for lands within or affected by the designations.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of these proposed critical habitat designations with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designations may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal

agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of designated critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the western fanshell, under the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for

critical habitat designation. We invite the public to comment on the extent to which this proposed regulation may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing this proposed rule.

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the western fanshell and “Ouachita” fanshell, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <http://www.regulations.gov> and upon request from the Missouri Ecological Services Field Office for western fanshell and the Arkansas Ecological Services Field Office for “Ouachita” fanshell (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 Missouri and Arkansas Ecological Services Field Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding entries for “Fanshell, ‘Ouachita’” and

“Fanshell, western” to the List of Endangered and Threatened Wildlife in alphabetical order under CLAMS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* CLAMS	*	*	*	*
Fanshell, “Ouachita”	<i>Cyprogenia cf. aberti</i>	Wherever found	T	[Federal Register citation when published as a final rule]; 50 CFR 17.45(e); ^{4d} 50 CFR 17.95(f). ^{CH}
Fanshell, western	<i>Cyprogenia aberti</i>	Wherever found	T	[Federal Register citation when published as a final rule]; 50 CFR 17.45(e); ^{4d} 50 CFR 17.95(f). ^{CH}
* 	*	*	*	*

■ 3. Add § 17.45 to read as follows:

§ 17.45 Special rules—snails and clams.

(a)–(d) [Reserved]

(e) “Ouachita” fanshell (*Cyprogenia cf. aberti*) and western fanshell (*Cyprogenia aberti*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the “Ouachita” fanshell and western fanshell. Except as provided under paragraph (e)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Channel and bank restoration projects for creation of natural, physically stable, ecologically functioning streams, taking into consideration connectivity with floodplain and groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; connection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. For bank stabilization projects that use bioengineering methods to replace preexisting, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native species brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Bank restoration projects require planting appropriate native vegetation, including

woody species appropriate for the region and habitat. These projects will not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures. To qualify under this exception, restoration projects must include the following:

(1) Surveys to determine presence of “Ouachita” fanshell and western fanshell prior to the commencement of restoration actions;

(2) If either mussel is present, coordination with the Service’s local Ecological Services field office for relocation of “Ouachita” fanshell and western fanshell mussels to suitable habitat outside of the project footprint prior to project implementation; and

(3) If relocation of mussels occurs, monitoring of relocated mussels post-implementation of restoration activities.

(B) Silviculture practices and forest management activities that use State-approved best management practices to protect water and sediment quality and stream and riparian habitat.

(C) Transportation projects that avoid or do not include instream disturbance in waters occupied by the species.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

■ 4. Amend § 17.95(f) by adding entries for “‘Ouachita’ Fanshell (*Cyprogenia cf. aberti*)” and “Western Fanshell (*Cyprogenia aberti*)” immediately following the entry for “Appalachian Elktoe (*Alasmidonta raveneliana*)”, to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
 (f) *Clams and Snails.*
 * * * * *

“Ouachita” Fanshell (*Cyprogenia cf. aberti*)

(1) Critical habitat units are depicted for Ashley, Bradley, Clark, Cleveland, Dallas, Drew, Grant, Montgomery, Nevada, Ouachita, Polk, and Saline Counties, Arkansas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of “Ouachita” fanshell consist of the following components:

(i) Adequate flows, or a hydrologic flow regime (magnitude, timing, frequency, duration, rate of change, and overall seasonality of discharge over time), necessary to maintain benthic habitats where the species is found and to maintain stream connectivity, specifically providing for the exchange of nutrients and sediment for maintenance of the mussel’s and fish hosts’ habitat and food availability, maintenance of spawning habitat for native host fishes, and the ability for newly transformed juveniles to settle and become established in their habitats. Adequate flows ensure delivery of oxygen, enable reproduction, deliver food to filter-feeding mussels, and reduce contaminants and fine sediments from interstitial spaces.

(ii) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (that is, channels that

maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater mussel and native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel and coarse sand substrates).

(iii) Water and sediment quality necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages, including, but not limited to: Dissolved oxygen (generally above 3 parts per million (ppm)) and water temperature (generally below 80 degrees Fahrenheit (°F) (27 degrees Celsius (°C))). Additionally, water and sediment should be low in ammonia (generally below 1.0 ppm total ammonia-nitrogen) and heavy metals, and lack excessive total suspended solids and other pollutants.

(iv) The presence and abundance of fish hosts necessary for recruitment of the “Ouachita” fanshell, including logperch (*Percina caprodes*), slenderhead darter (*Percina phoxocephala*), or orangebelly darter (*Etheostoma radiosum*).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the rule.

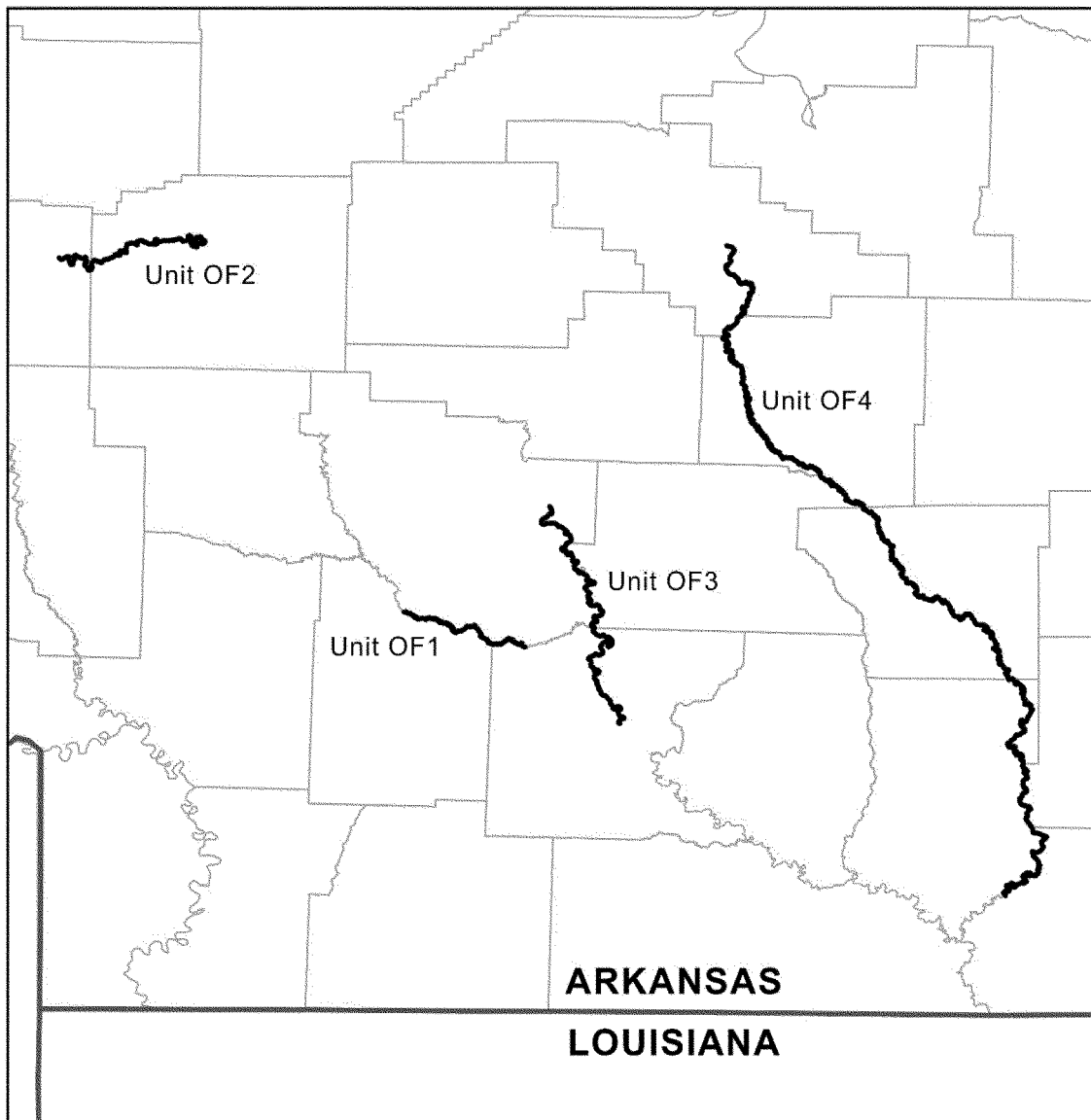
(4) Data layers defining map units were created by overlaying Natural Heritage Element Occurrence data and

U.S. Geological Survey hydrologic data for stream reaches using ESRI ArcGIS mapping software. Critical habitat unit upstream and downstream limits were delineated at the nearest road crossing or stream confluence of each occupied reach. Data layers defining map units were created with U.S. Geological Survey National Hydrography Dataset (NHD) Medium Flowline data. ArcGIS was also used to calculate river kilometers and river miles from the NHD dataset, and it was used to determine longitude and latitude coordinates in decimal degrees. The projection used in mapping and calculating distances and locations within the units was EPSG:4269–NAD83 Geographic. Natural Heritage program and State mussel database species presence data from Arkansas were used to select specific river and stream segments for inclusion in the critical habitat layer. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service’s internet site at <https://www.fws.gov/southeast/>, at <http://www.regulations.gov> at Docket No. FWS–R3–ES–2021–0061, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

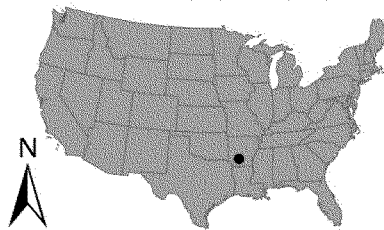
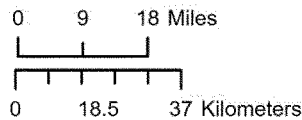
(5) *Note:* Index map follows:

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Index Map: "Ouachita" Fanshell Critical Habitat Units



Critical Habitat
 State Boundaries



(6) *Unit OF 1*: Little Missouri River; Clark, Nevada, and Ouachita Counties, Arkansas.

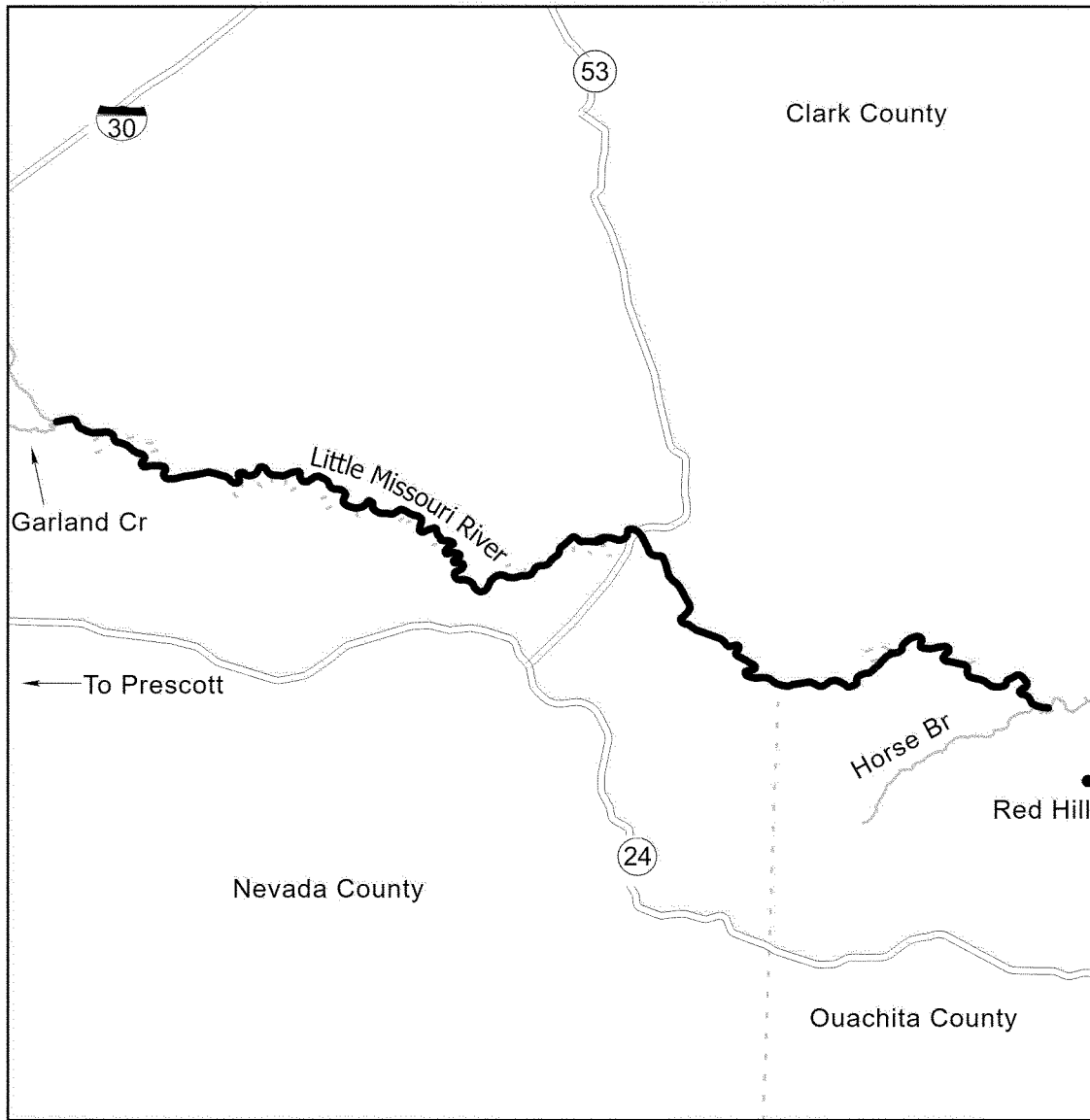
(i) Unit OF 1 consists of 22.9 river miles (mi) (36.9 kilometers (km)) of Little Missouri River in Clark, Nevada,

and Ouachita Counties, Arkansas, from the mouth of Garland Creek northeast of Prescott, Nevada County, downstream to the mouth of Horse Branch north of Red Hill, Ouachita County, and includes the river channel up to the ordinary high

water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership.

(ii) Map of Unit OF 1 follows:

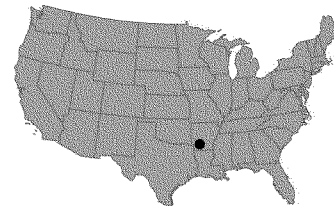
Critical Habitat for "Ouachita" Fanshell
 OF1 Little Missouri River; Clark, Nevada, and Ouachita Counties, Arkansas



- Critical Habitat
- Major Road
- County Boundary
- State Boundary
- River
- Waterbody

N

 1 inch = 5 Kilometers
 1 inch = 3 miles



(7) Unit OF 2: Ouachita Headwaters; Montgomery and Polk Counties, Arkansas.

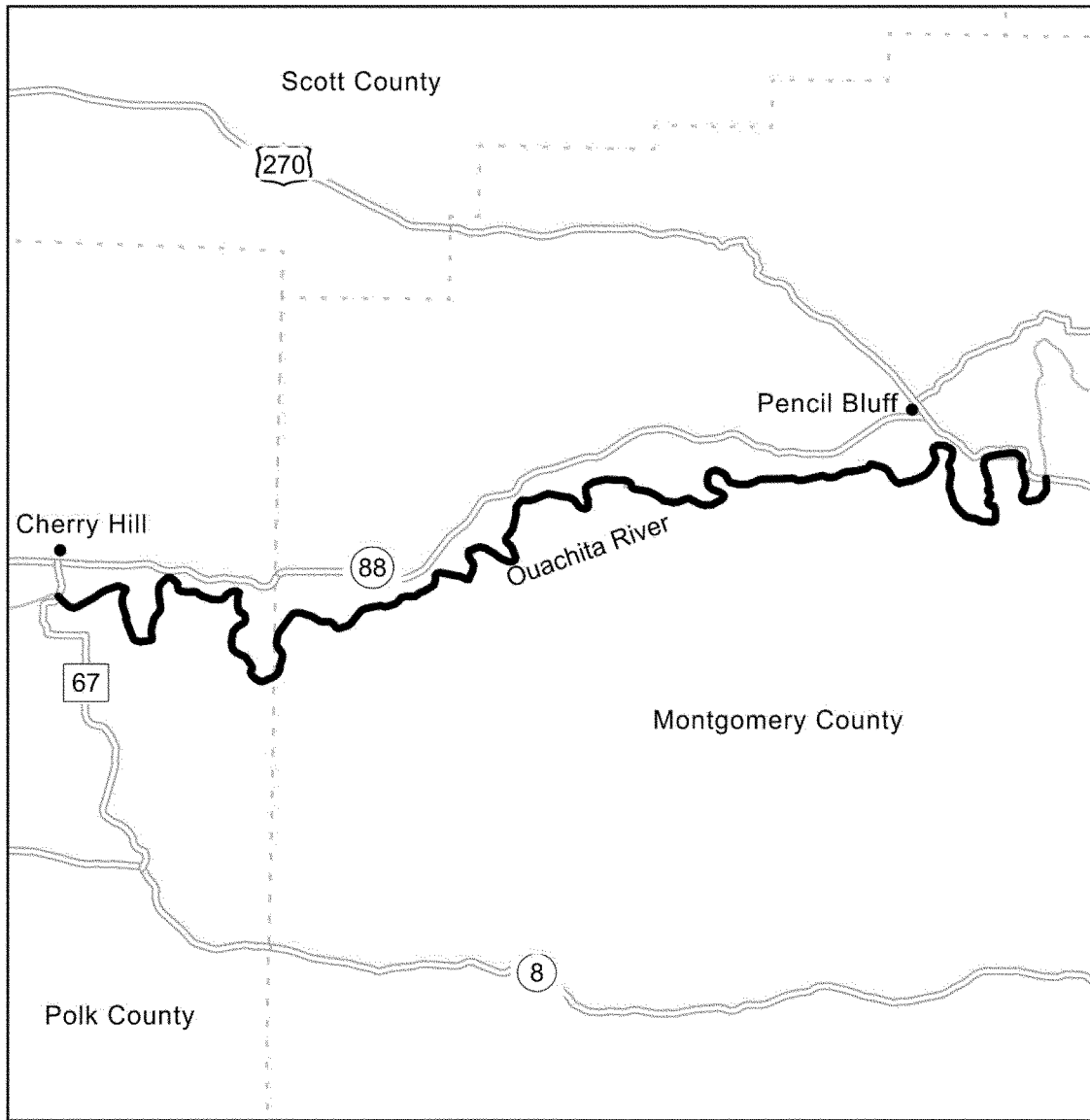
(i) Unit OF 2 consists of 32.7 river mi (52.6 km) of Ouachita River in Montgomery and Polk Counties, Arkansas, from the County Road 67 crossing south of Cherry Hill, Polk

County, downstream to the U.S. Route 270 crossing southeast of Pencil Bluff, Montgomery County, and includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 29.9 river mi (48.1 km; 91 percent) in private ownership and 2.8 river mi (4.5 km; 9

percent) in public (Federal) ownership. The public ownership in this unit is Federal land associated with the U.S. Forest Service's Ouachita National Forest.

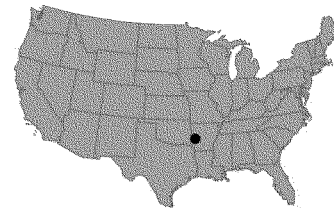
(ii) Map of Unit OF 2 follows:

Critical Habitat for "Ouachita" Fanshell
 OF2 Ouachita Headwaters; Montgomery and Polk Counties, Arkansas



- Critical Habitat
- == Major Road
- - - County Boundary
- - - State Boundary
- River
- Waterbody

N
 1 inch = 6 Kilometers
 1 inch = 4 miles



(8) *Unit OF 3*: Ouachita River; Clark, Dallas, and Ouachita Counties, Arkansas.

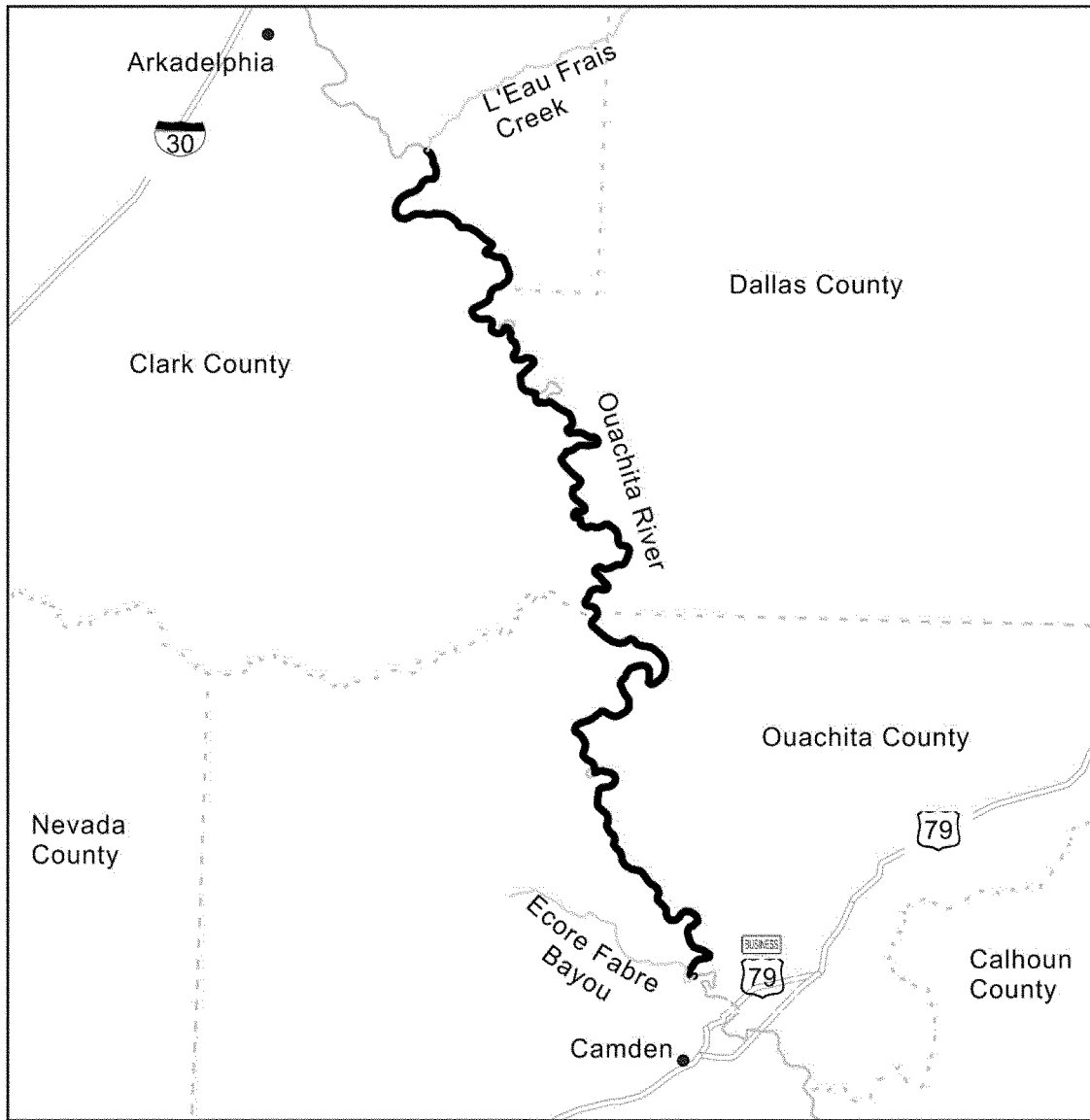
(i) *Unit OF 3* consists of 53.5 river mi (86.1 km) of Ouachita River in Clark, Dallas, and Ouachita Counties,

Arkansas, from the mouth of L'Eau Frais Creek southeast of Arkadelphia, Clark County, downstream to the mouth of Ecore Fabre Bayou north of Camden, Ouachita County, and includes the river channel up to the ordinary high water

mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. There is a Wetlands Reserve Program easement within the unit.

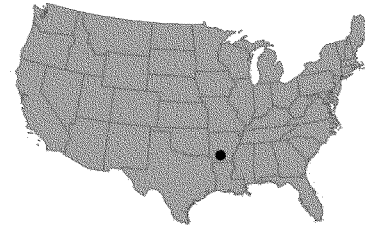
(ii) Map of *Unit OF 3* follows:

Critical Habitat for "Ouachita" Fanshell
 OF3 Ouachita River; Clark, Dallas, and Ouachita Counties, Arkansas



- Critical Habitat
- Major Road
- County Boundary
- State Boundary
- River
- Waterbody

1 inch = 11 Kilometers
 1 inch = 7 miles



(9) *Unit OF 4*: Saline River; Ashley, Bradley, Cleveland, Dallas, Drew, Grant, and Saline Counties, Arkansas.

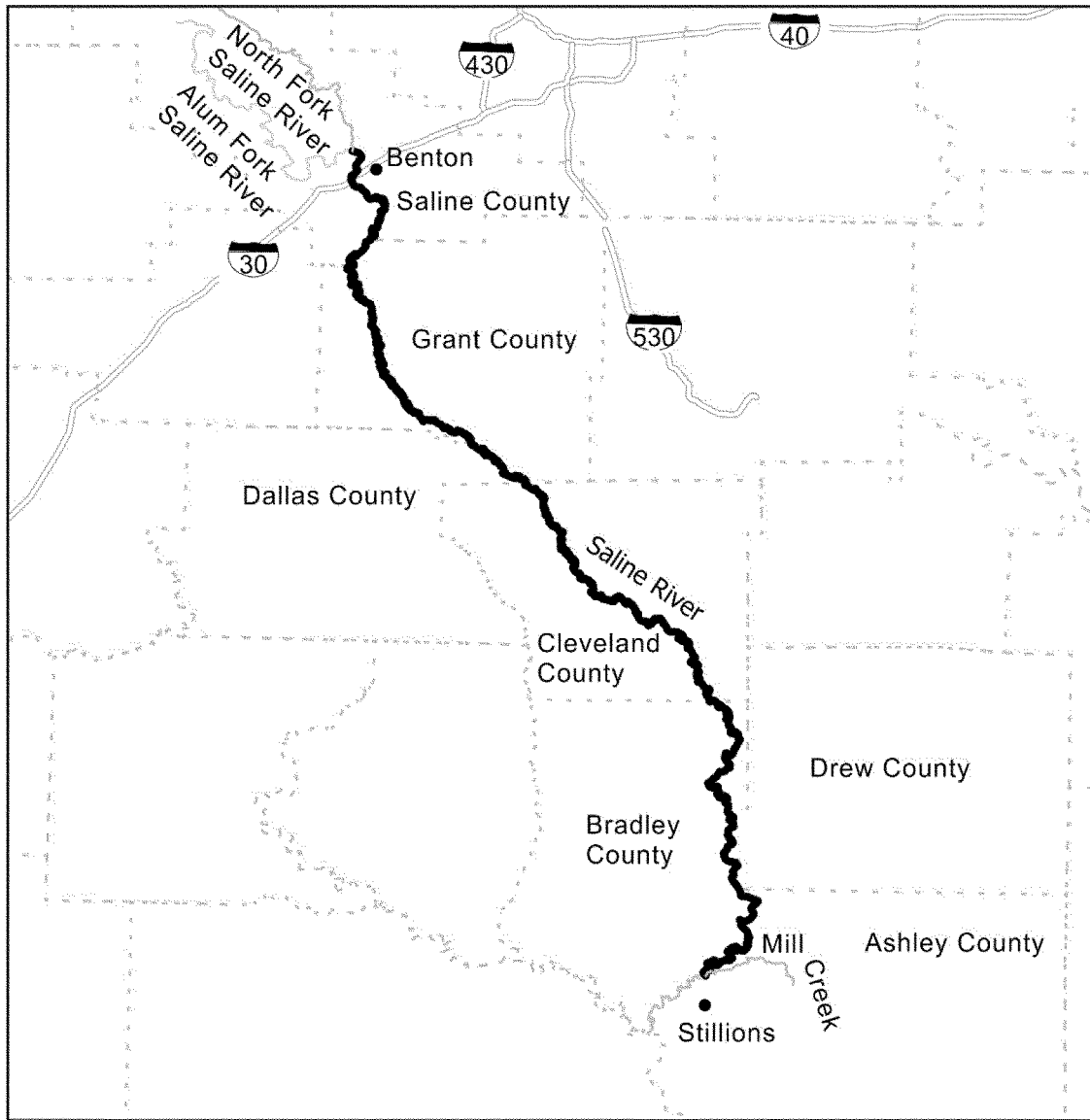
(i) Unit OF 4 consists of 185.3 river mi (298.2 km) of Saline River in Ashley, Bradley, Cleveland, Dallas, Drew, Grant, and Saline Counties, Arkansas, from the

mouth of North Fork Saline River north of Benton, Saline County, downstream to the mouth of Mill Creek north of Stillions, Ashley County, and includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border

the unit are in private ownership and less than 1 percent is in public ownership. The public ownership in this unit is State-owned land associated with Jenkins Ferry State Park.

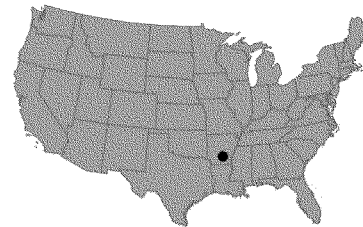
(ii) Map of Unit OF 4 follows:

Critical Habitat for "Ouachita" Fanshell
 OF4 Saline River; Ashley, Bradley, Cleveland, Dallas, Drew, Grant, and Saline
 Counties, Arkansas



- Critical Habitat
- Major Road
- - - County Boundary
- State Boundary
- River
- Waterbody

N
 1 inch = 34 Kilometers
 1 inch = 21 miles



Western Fanshell (*Cyprogenia aberti*)

(1) Critical habitat units are depicted for Cleburne, Fulton, Independence, Jackson, Lawrence, Randolph, Sharp, Stone, and Van Buren Counties, Arkansas; Cherokee, Greenwood, Montgomery, and Wilson Counties, Kansas; and Butler, Jasper, Madison,

and Wayne Counties, Missouri, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of western fanshell consist of the following components:

(i) Adequate flows, or a hydrologic flow regime (magnitude, timing, frequency, duration, rate of change, and overall seasonality of discharge over

time), necessary to maintain benthic habitats where the species is found and to maintain stream connectivity, specifically providing for the exchange of nutrients and sediment for maintenance of the mussel's and fish hosts' habitat and food availability, maintenance of spawning habitat for native host fishes, and the ability for newly transformed juveniles to settle

and become established in their habitats. Adequate flows ensure delivery of oxygen, enable reproduction, deliver food to filter-feeding mussels, and reduce contaminants and fine sediments from interstitial spaces.

(ii) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (that is, channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater mussel and native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel and coarse sand substrates).

(iii) Water and sediment quality necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages, including, but not limited to: dissolved oxygen (generally above 3 parts per million (ppm)) and water temperature (generally below 80 degrees Fahrenheit (°F) (27 degrees Celsius (°C))). Additionally, water and sediment should be low in ammonia (generally below 1.0 ppm total ammonia-nitrogen) and heavy metals, and lack excessive

total suspended solids and other pollutants.

(iv) The presence and abundance of fish hosts necessary for recruitment of the western fanshell, including logperch (*Percina caprodes*), rainbow darter (*Etheostoma caeruleum*), slenderhead darter (*Percina phoxocephala*), fantail darter (*Etheostoma flabellare*), or orangebelly darter (*Etheostoma radiosum*).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the rule.

(4) Data layers defining map units were created by overlaying Natural Heritage Element Occurrence data and U.S. Geological Survey hydrologic data for stream reaches using ESRI ArcGIS mapping software. Critical habitat unit upstream and downstream limits were delineated at the nearest road crossing or stream confluence of each occupied reach. Data layers defining map units were created with U.S. Geological Survey National Hydrography Dataset (NHD) Medium Flowline data. ArcGIS was also used to calculate river

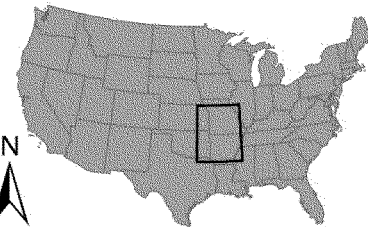
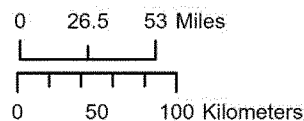
kilometers and river miles from the NHD dataset, and it was used to determine longitude and latitude coordinates in decimal degrees. The projection used in mapping and calculating distances and locations within the units was EPSG:4269–NAD83 Geographic. Natural Heritage program and State mussel database species presence data from Arkansas, Kansas, and Missouri were used to select specific river and stream segments for inclusion in the critical habitat layer. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at <https://www.fws.gov/midwest/>, at <http://www.regulations.gov> at Docket No. FWS–R3–ES–2021–0061, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

Index Map: Western Fanshell Critical Habitat Units



— Critical Habitat
— State Boundaries



(6) *Unit WF 1*: Upper Black River; Butler and Wayne Counties, Missouri.

(i) Unit WF 1 consists of 64.7 river miles (mi) (104.1 kilometers (km)) of Black River in Butler and Wayne Counties, Missouri, from Clearwater Dam southwest of Piedmont, Wayne County, extending downstream to Butler County Road 658 crossing southeast of

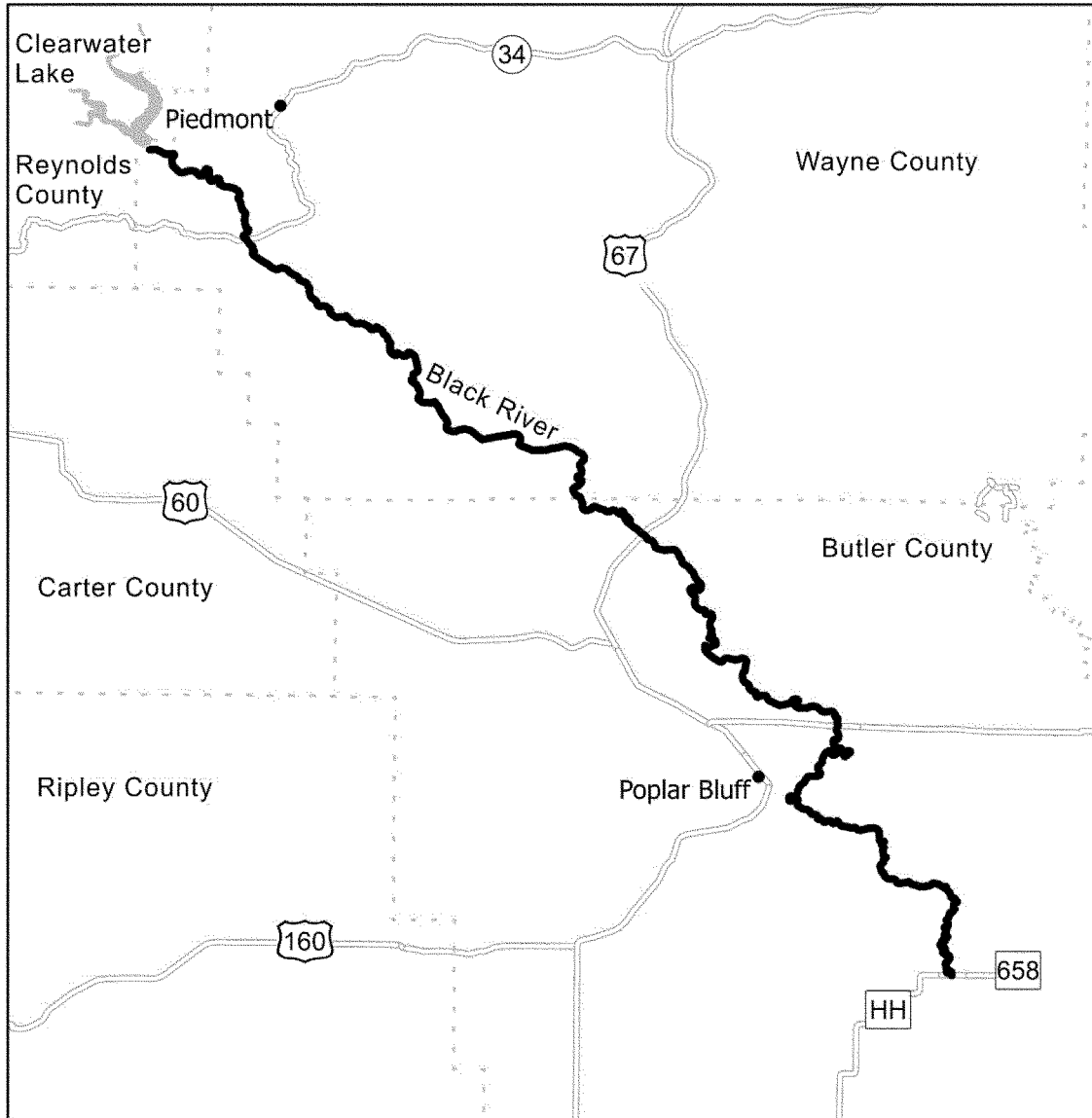
Poplar Bluff, Butler County, and includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 51 river mi (82.1 km; 79 percent) in private ownership and 13.7 river mi (22 km; 21 percent) in public (Federal or State) ownership. Approximately 2.7 miles of the public

ownership in this unit are State lands associated with Missouri Department of Conservation's (MDC) Bradley A. Hammer Memorial Conservation Area, Dan River Access, Hilliard Access, and Stephen J. Sun Conservation Area. Eleven miles are Federal land associated with the U.S. Forest Service's (USFS) Mark Twain National Forest and U.S.

Army Corps of Engineers (USACE)
Clearwater Recreation Area.

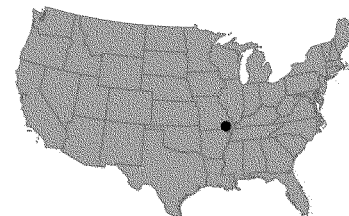
(ii) Map of Unit WF 1 follows:

**Critical Habitat for Western Fanshell
WF1 Upper Black River; Butler and Wayne Counties, Missouri**



- Critical Habitat
- Major Road
- - - County Boundary
- - - State Boundary
- River
- Waterbody

N
1 inch = 12 Kilometers
1 inch = 8 miles



(7) *Unit WF 2: Lower Black/ Strawberry River; Independence, Jackson, Lawrence, and Sharp Counties, Arkansas.*

(i) Unit WF 2 consists of 111.3 river mi (179.1 km) of Black River and

Strawberry River in Independence, Jackson, Lawrence, and Sharp Counties in Arkansas, and includes the river channel up to the ordinary high water mark. Black River makes up 54.6 river mi (87.9 km) from the mouth of Spring

River northeast of Black Rock, extending downstream to the mouth of Strawberry River northeast of Dowdy, Independence County. Strawberry River makes up 56.7 river mi (91.2 km) from the mouth of Lave Creek north of

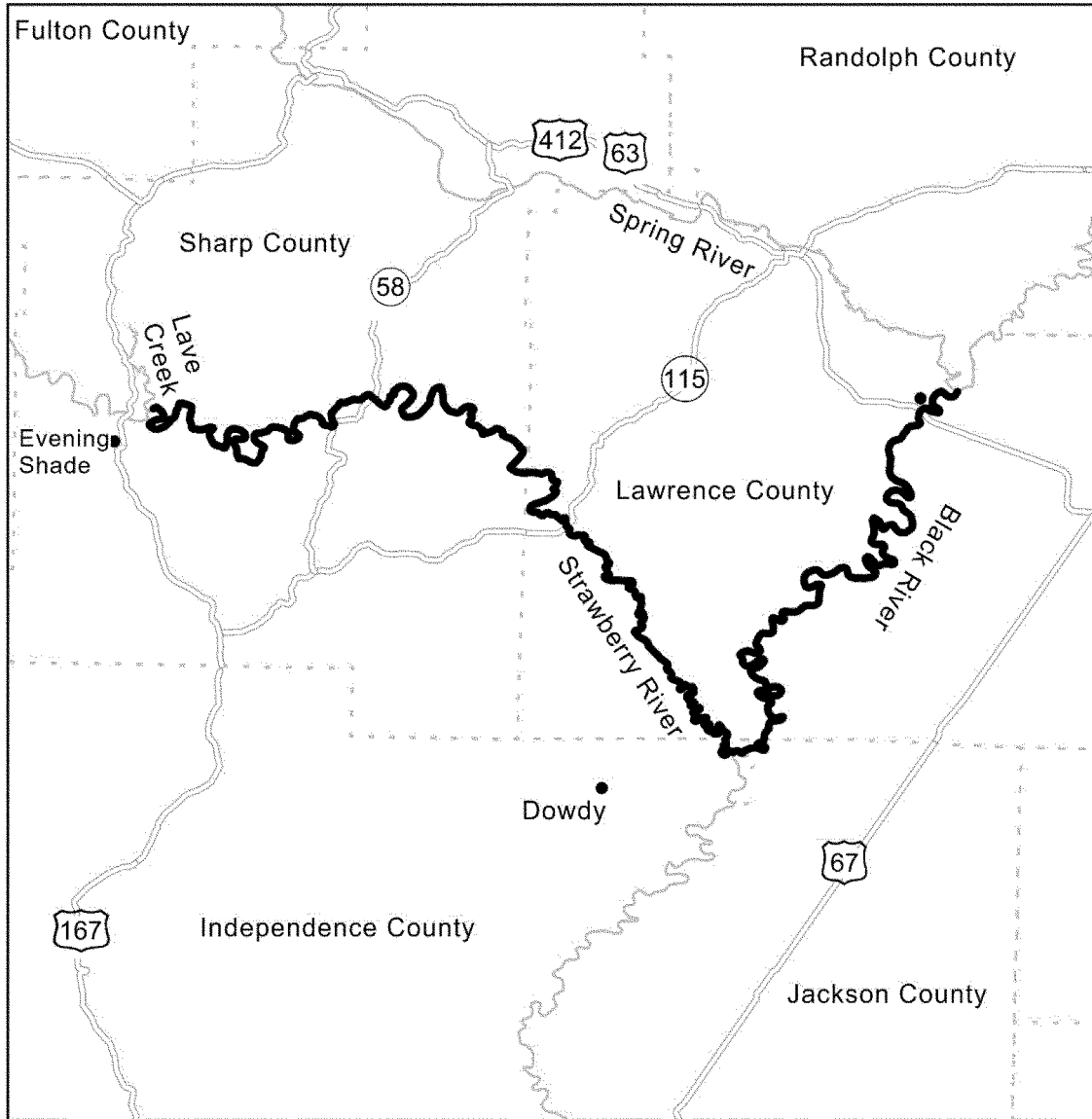
Evening Shade, Sharp County, extending downstream to the confluence with Black River northeast of Dowdy, Independence County. Riparian lands that border the unit include approximately 100.4 river mi

(161.6 km; 90 percent) in private ownership and 10.9 river mi (17.5 km; 10 percent) in public (State) ownership. The public land ownership in this unit is associated with Arkansas Game and Fish Commission's Shirey Bay Rainey

Brake Wildlife Management Area on Black River. The Nature Conservancy's Strawberry River Preserve and Ranch on Strawberry River is also in this unit.

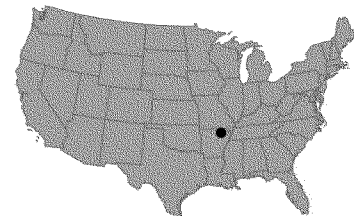
(ii) Map of Unit WF 2 follows:

**Critical Habitat for Western Fanshell
WF2 Lower Black/Strawberry River; Independence, Jackson, Lawrence, and Sharp Counties, Arkansas**



- Critical Habitat
- Major Road
- - - County Boundary
- - - State Boundary
- River
- Waterbody

N
1 inch = 13 Kilometers
1 inch = 8 miles



(8) Unit WF 3: Fall River; Greenwood and Wilson Counties, Kansas.

(i) Unit WF 3 consists of 45.5 river mi (73.2 km) of Fall River in Greenwood

and Wilson Counties, Kansas, from the Greenwood County Road 33/Merchants

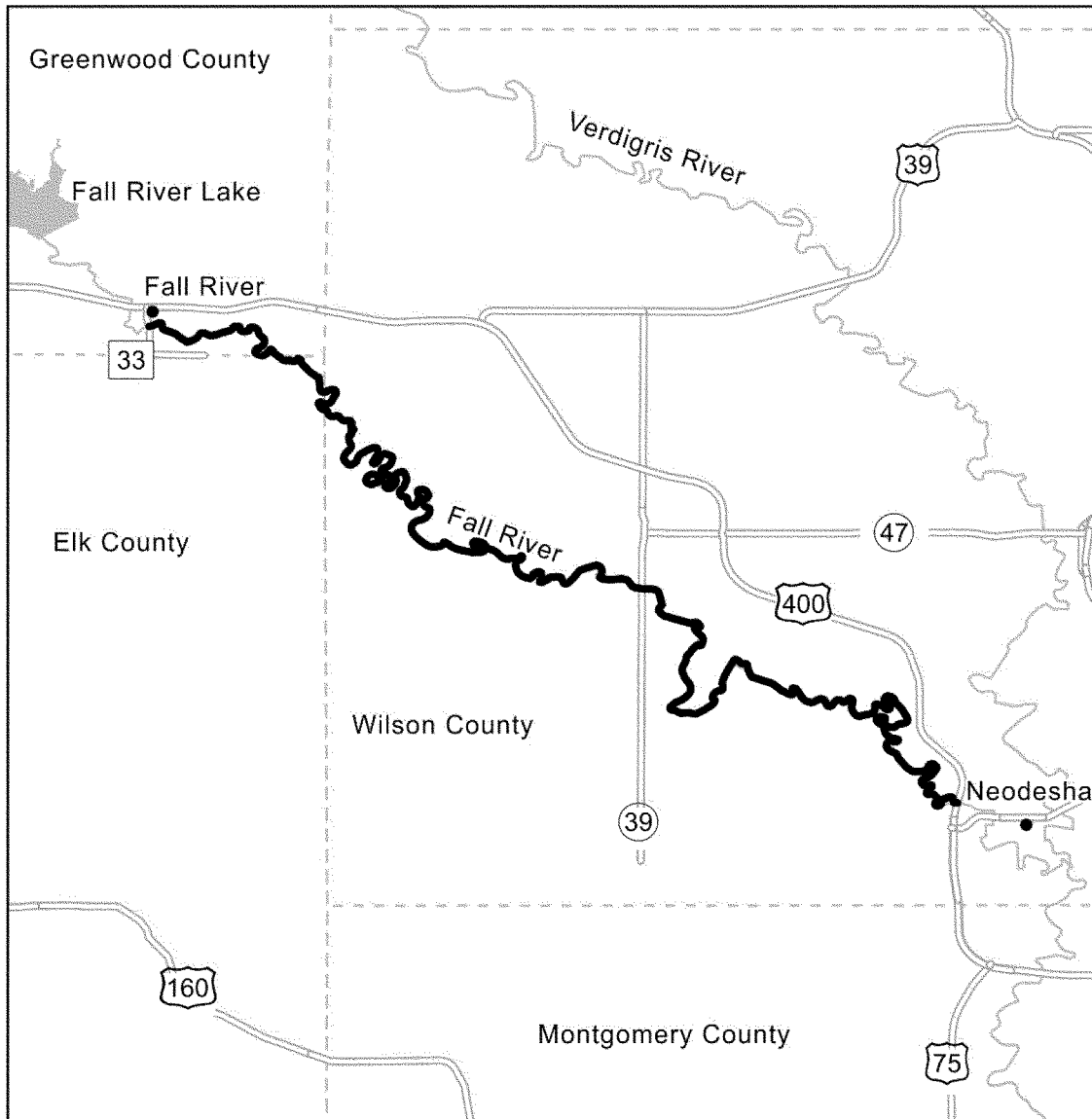
Avenue crossing at Fall River, Greenwood County, extending downstream to the U.S. Route 400 crossing west of Neodesha, Wilson

County, and includes the river channel up to the ordinary high water mark. Approximately 100 percent of the

riparian lands that border the unit are in private ownership.

(ii) Map of Unit WF 3 follows:

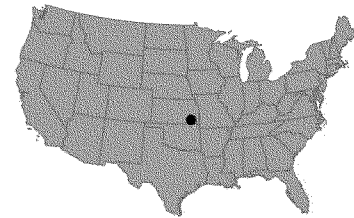
**Critical Habitat for Western Fanshell
WF3 Fall River; Greenwood and Wilson Counties, Kansas**



- Critical Habitat
- Major Road
- County Boundary
- State Boundary
- River
- Waterbody

N

 1 inch = 8 Kilometers
 1 inch = 5 miles



(9) *Unit WF 4: Middle Fork Little Red River; Cleburne, Stone, and Van Buren Counties, Arkansas.*

(i) Unit WF 4 consists of 34.1 river mi (54.8 km) of the Middle Fork Little Red River in Cleburne, Stone, and Van Buren Counties, Arkansas, from the

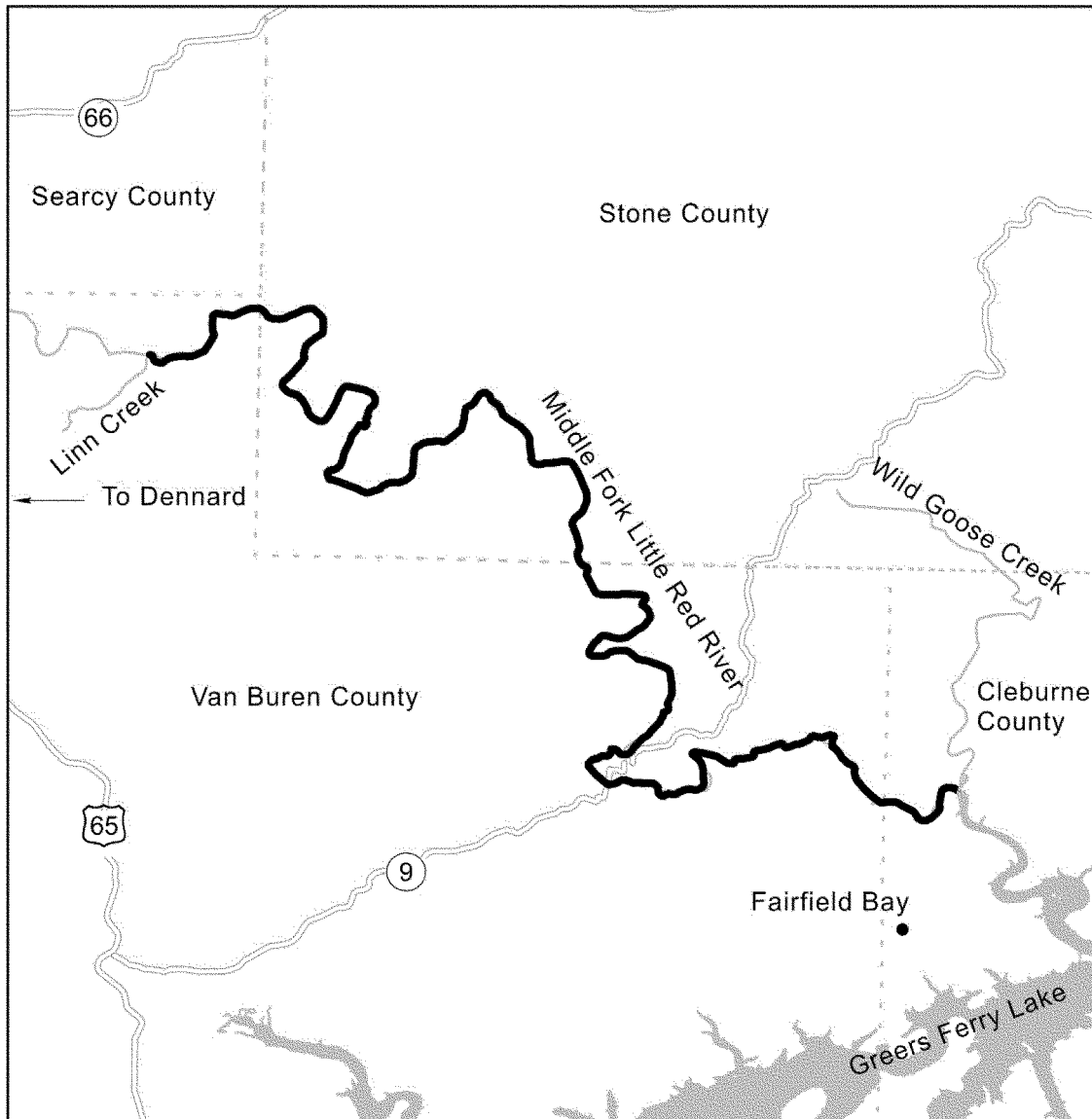
mouth of Linn Creek east of Dennard, Van Buren County, extending downstream to the mouth of Wild Goose Creek north of Fairfield Bay, Cleburne

and Van Buren counties, and includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately

30.6 river mi (49.2 km; 90 percent) in private ownership and 3.5 river mi (5.6 km; 10 percent) in public (Federal) ownership. All of the public land

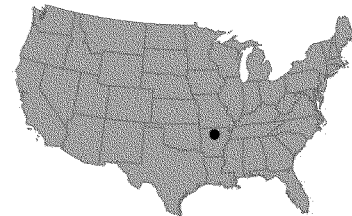
ownership in this unit is Federal land associated with the USACE's Greers Ferry Recreation Area.
(ii) Map of Unit WF 4 follows:

**Critical Habitat for Western Fanshell
WF4 Middle Fork Little Red River; Cleburne, Stone, and Van Buren Counties,
Arkansas**



- Critical Habitat
- Major Road
- County Boundary
- State Boundary
- River
- Waterbody

N
1 inch = 6 Kilometers
1 inch = 4 miles



(10) *Unit WF 5*: St. Francis River; Madison and Wayne Counties, Missouri.
(i) *Unit WF 5* consists of 49.3 river mi (79.3 km) of St. Francis River in

Madison and Wayne Counties, Missouri, extending from the mouth of Wachita Creek west of Fredericktown, Madison County, downstream to the mouth of Big

Creek northwest of Silva, Wayne County, and includes the river channel up to the ordinary high water mark. Riparian lands that border the unit

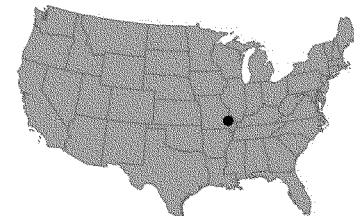
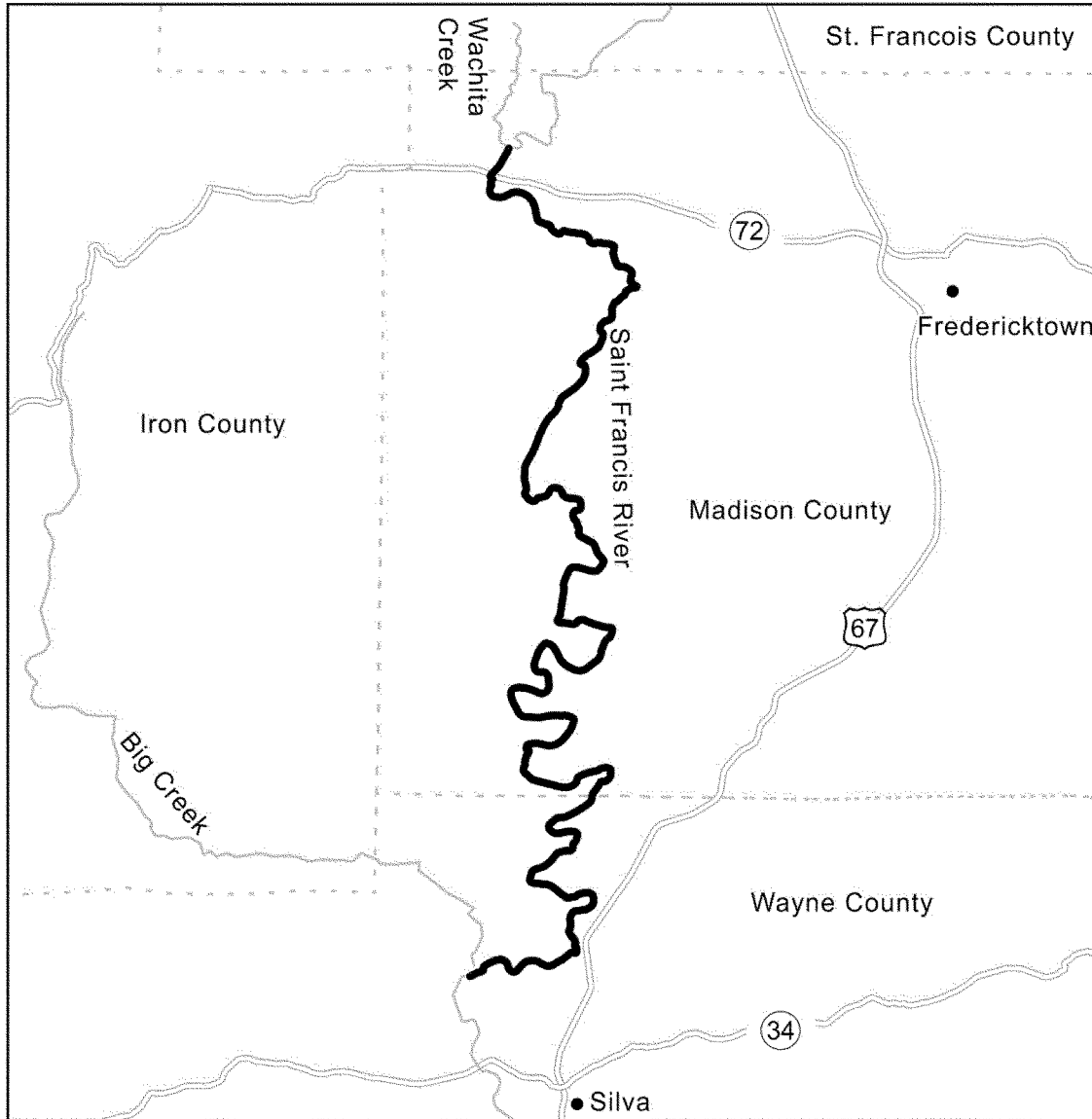
include approximately 36.7 river mi (59.1 km; 74 percent) in private ownership and 12.6 river mi (20.2 km; 26 percent) in public (Federal or State) ownership. Approximately 2.4 river mi

of the public ownership in this unit are State lands associated with MDC's Coldwater Conservation Area, Mill Stream Gardens, and Roselle Access. Ten miles are Federal land associated

with the USFS's Mark Twain National Forest.

(ii) Map of Unit WF 5 follows:

**Critical Habitat for Western Fanshell
WF5 St. Francis River; Madison and Wayne Counties, Missouri**



(11) *Unit WF 6: South Fork Spring River; Fulton County, Arkansas.*

(i) *Unit WF 6 consists of 13.4 river mi (21.6 km) of South Fork Spring River in Fulton County, Arkansas, from the*

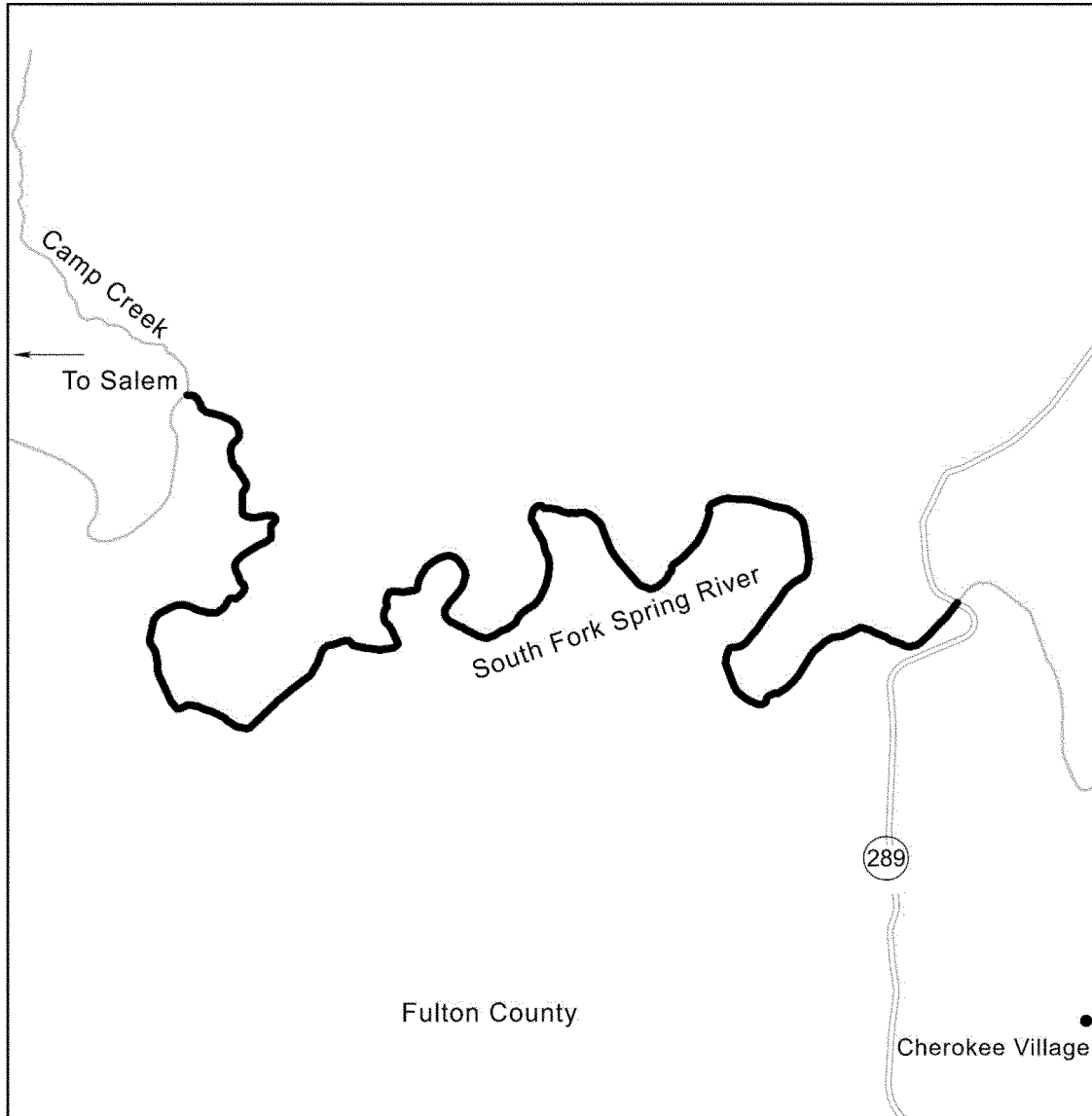
mouth of Camp Creek east of Salem, Fulton County, extending downstream to the Arkansas Highway 289 crossing

northwest of Cherokee Village, Fulton and Sharp Counties, and includes the river channel up to the ordinary high

water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership.

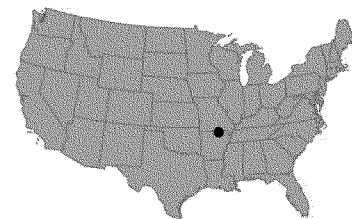
(ii) Map of Unit WF 6 follows:

**Critical Habitat for Western Fanshell
WF6 South Fork Spring River; Fulton County, Arkansas**



- Critical Habitat
- Major Road
- County Boundary
- State Boundary
- River
- Waterbody

1 inch = 2 Kilometers
 1 inch = 1 miles



(12) *Unit WF 7: Spring River (AR); Lawrence and Randolph Counties, Arkansas.*

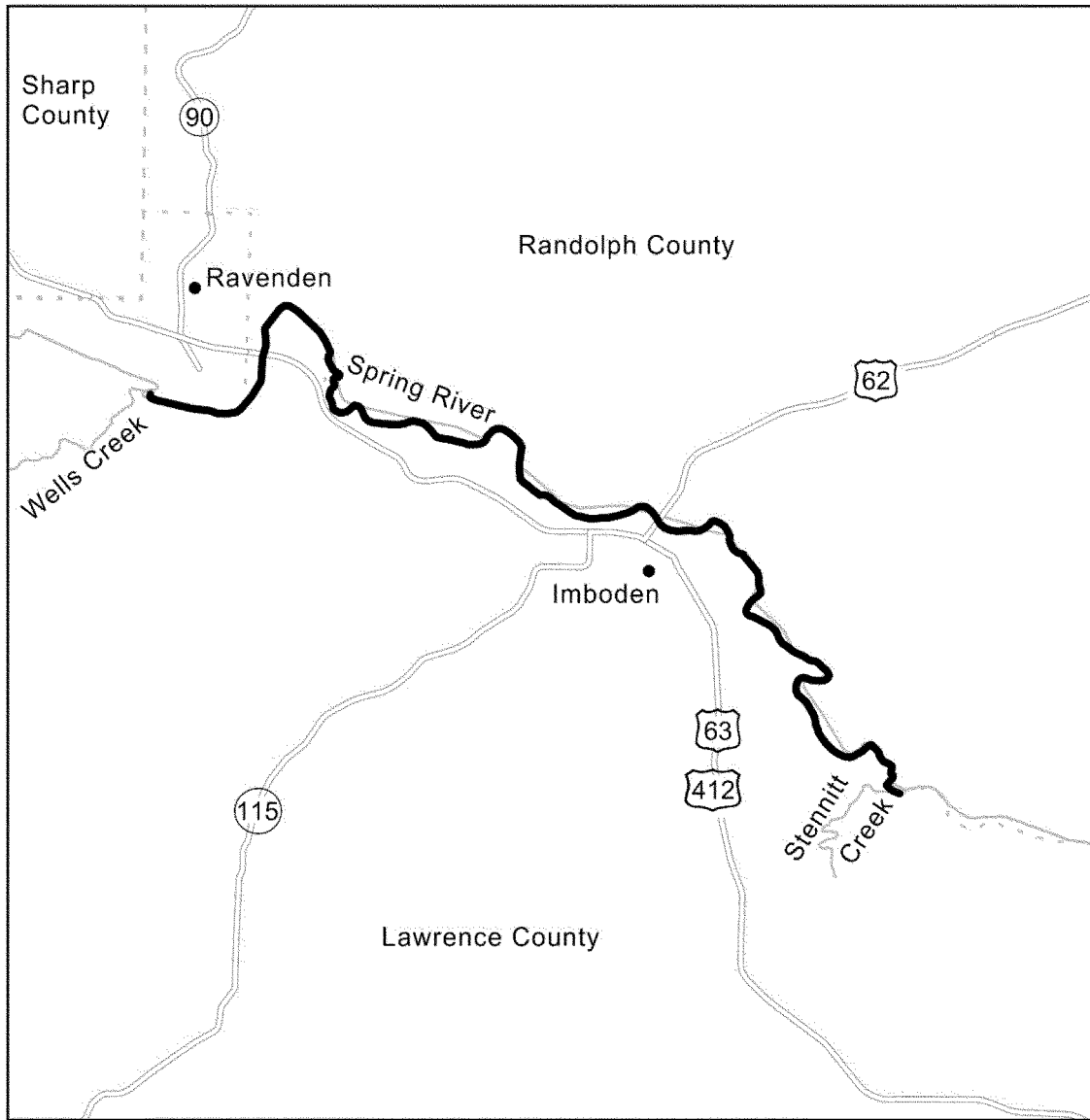
(i) Unit WF 7 consists of 14.2 river mi (22.9 km) of Spring River in Lawrence

and Randolph Counties, Arkansas, from the mouth of Wells Creek at Ravenden, extending downstream to the mouth of Stennitt Creek southeast of Imboden, Lawrence County, and includes the

river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership.

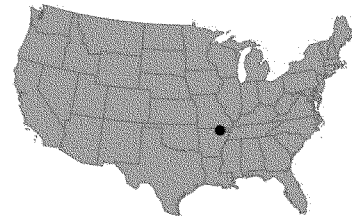
(ii) Map of Unit WF 7 follows:

Critical Habitat for Western Fanshell
 WF7 Spring River (AR); Lawrence and Randolph Counties, Arkansas



- Critical Habitat
- Major Road
- County Boundary
- State Boundary
- River
- Waterbody

1 inch = 4 Kilometers
 1 inch = 2 miles



(13) *Unit WF 8: Spring River (MO/KS); Jasper County, Missouri, and Cherokee County, Kansas.*

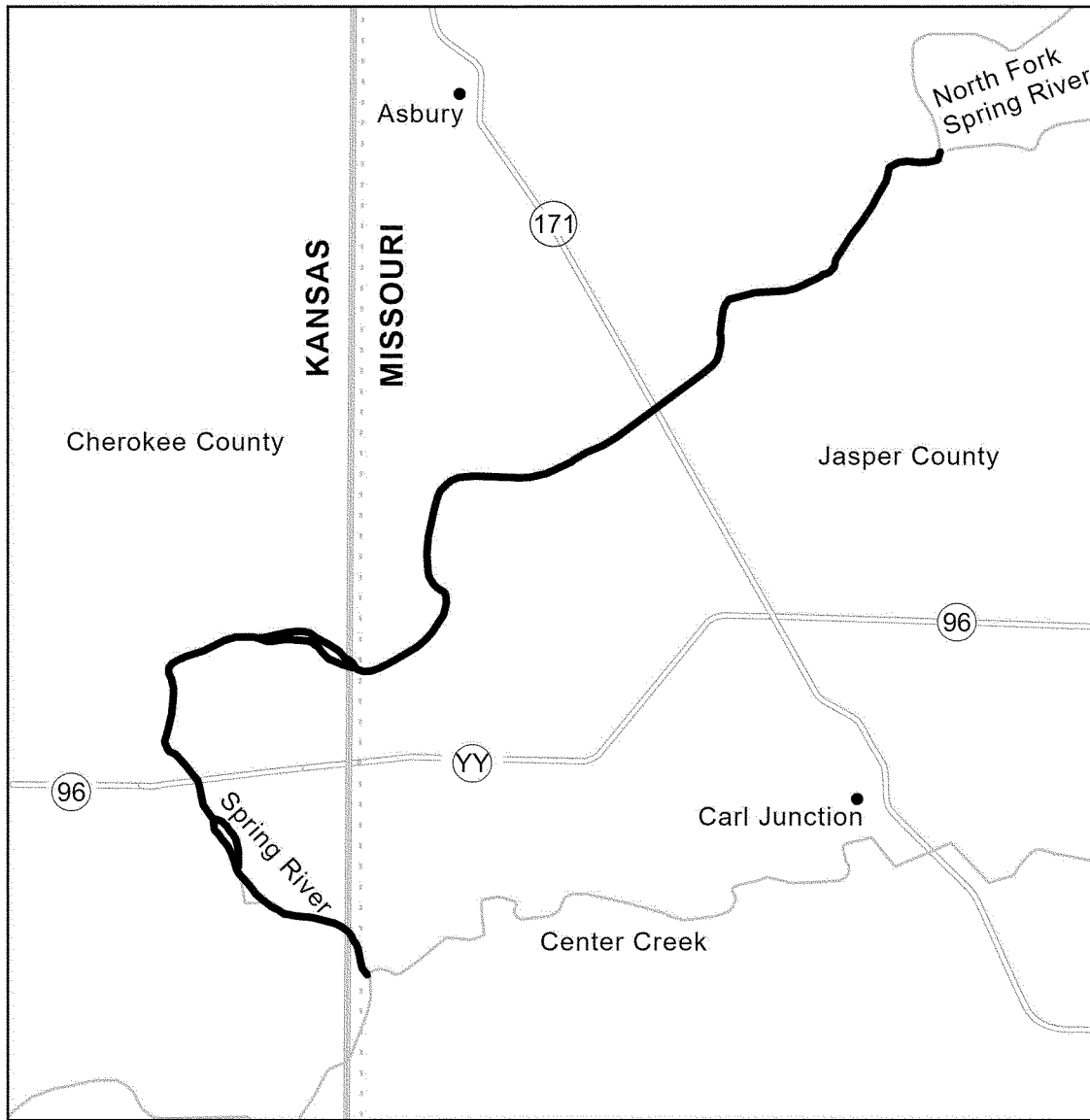
(i) Unit WF 8 consists of 15 river mi (24.1 km) of Spring River in Jasper County, Missouri, and Cherokee County, Kansas, from the mouth of North Fork Spring River east of Asbury, Jasper

County, Missouri, extending downstream through Cherokee County, Kansas, to the mouth of Center Creek west of Carl Junction, Jasper County, Missouri, and includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 14.0 river mi

(22.5 km; 94 percent) in private ownership and 1.0 river mi (1.6 km; 6 percent) in public (State) ownership. The public ownership of this unit is State land associated with the Kansas Department of Wildlife, Parks and Tourism's Spring River Wildlife Area.

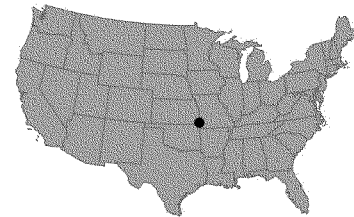
(ii) Map of Unit WF 8 follows:

Critical Habitat for Western Fanshell
 WF8 Spring River (MO/KS); Jasper County, Missouri; Cherokee County,
 Kansas



- Critical Habitat
- Major Road
- County Boundary
- State Boundary
- River
- Waterbody

1 inch = 3 Kilometers
 1 inch = 2 miles



(14) *Unit WF 9*: Verdigris River; Montgomery and Wilson Counties, Kansas.

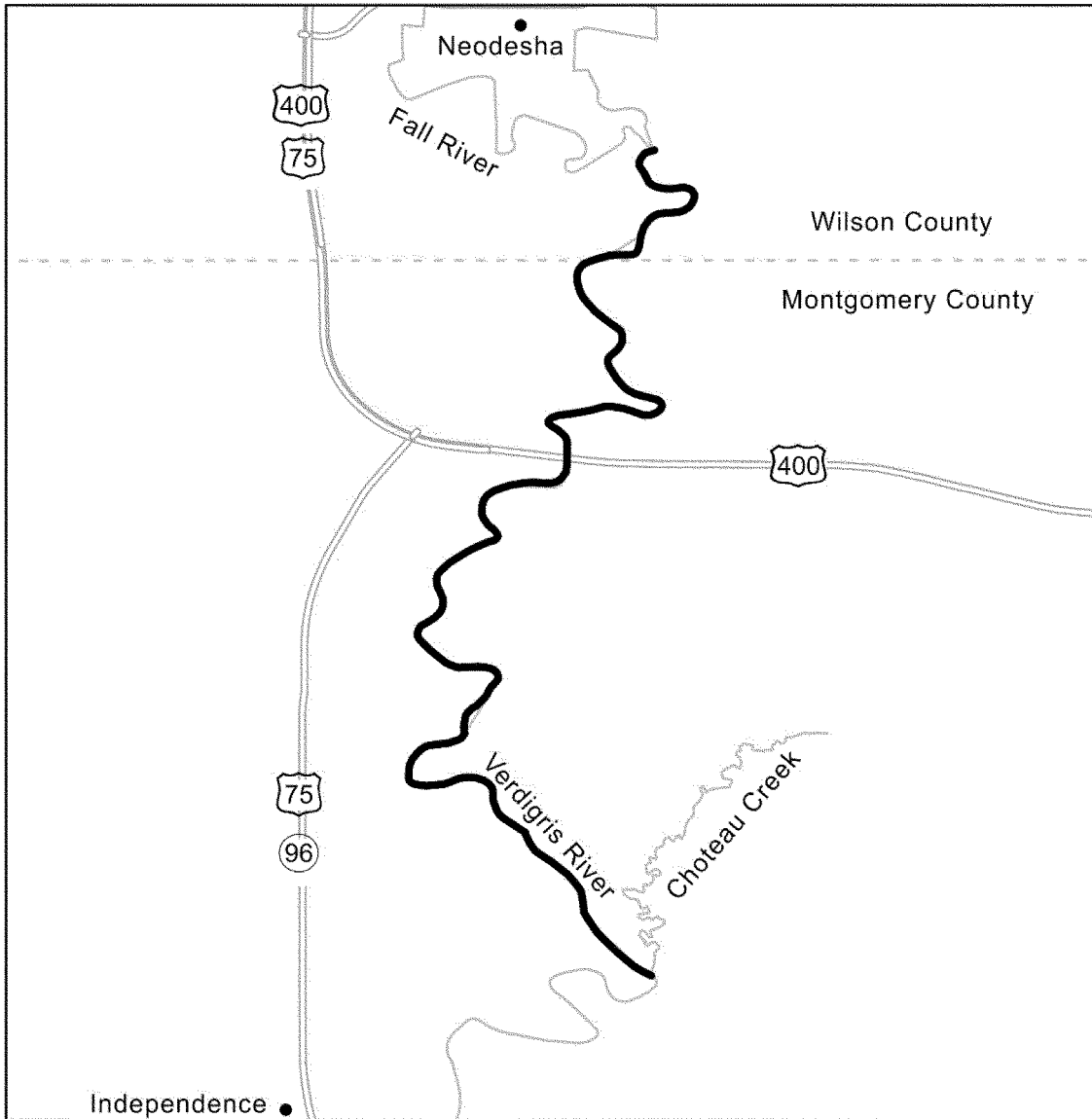
(i) Unit WF 9 consists of 12.4 river mi (20 km) of Verdigris River in Montgomery and Wilson Counties,

Kansas, from the mouth of Fall River south of Neodesha, Wilson County, extending downstream to the mouth of Choteau Creek northeast of Independence, Montgomery County, and includes the river channel up to the

ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership.

(ii) Map of Unit WF 9 follows:

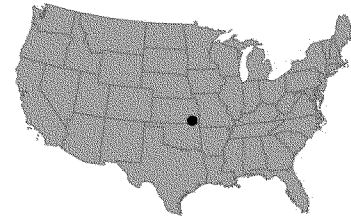
Critical Habitat for Western Fanshell
WF9 Verdigris River; Montgomery and Wilson Counties, Kansas



- Critical Habitat
- Major Road
- County Boundary
- State Boundary
- River
- Waterbody

N

 1 inch = 3 Kilometers
 1 inch = 2 miles



* * * * *

Martha Williams,
*Principal Deputy Director, Exercising the
Delegated Authority of the Director, U.S. Fish
and Wildlife Service.*

[FR Doc. 2022-02994 Filed 3-2-22; 8:45 am]

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FEDERAL REGISTER

Vol. 87

Thursday,

No. 42

March 3, 2022

Part V

The President

Notice of March 2, 2022—Continuation of the National Emergency With Respect to Ukraine

Title 3—

Notice of March 2, 2022

The President

Continuation of the National Emergency With Respect to Ukraine

On March 6, 2014, by Executive Order 13660, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of persons that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

On March 16, 2014, the President issued Executive Order 13661, which expanded the scope of the national emergency declared in Executive Order 13660, and found that the actions and policies of the Government of the Russian Federation with respect to Ukraine undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

On March 20, 2014, the President issued Executive Order 13662, which further expanded the scope of the national emergency declared in Executive Order 13660, as expanded in scope in Executive Order 13661, and found that the actions and policies of the Government of the Russian Federation, including its purported annexation of Crimea and its use of force in Ukraine, continue to undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

On December 19, 2014, the President issued Executive Order 13685, to take additional steps to address the Russian occupation of the Crimea region of Ukraine.

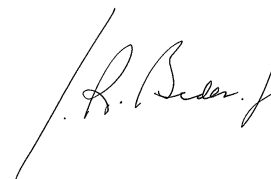
On September 20, 2018, the President issued Executive Order 13849, to take additional steps to implement certain statutory sanctions with respect to the Russian Federation.

On February 21, 2022, the President issued Executive Order 14065, which further expanded the scope of the national emergency declared in Executive Order 13660, as expanded in scope in Executive Orders 13661 and 13662, and relied on for additional steps taken in Executive Orders 13685 and 13849, and found that the Russian Federation's purported recognition of the so-called Donetsk People's Republic or Luhansk People's Republic regions of Ukraine contradicts Russia's commitments under the Minsk agreements and further threatens the peace, stability, sovereignty, and territorial integrity of Ukraine, and thereby constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.

The actions and policies addressed in these Executive Orders continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13660, which was expanded in scope in Executive Order 13661, Executive Order 13662, and Executive Order 14065, and under which additional steps were taken in Executive Order 13685 and Executive Order 13849, must continue in effect beyond March 6, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)),

I am continuing for 1 year the national emergency declared in Executive Order 13660.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 2, 2022.

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Federal Register

Vol. 87, No. 42

Thursday, March 3, 2022

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FEDERAL REGISTER PAGES AND DATE, MARCH

11275-11580.....	1
11581-11922.....	2
11923-12388.....	3

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

10342.....11923

10343.....11925

10344.....11927

10345.....11929

Administrative Orders:

Notices:

Notice of March 2,
2022.....12387

5 CFR

Proposed Rules:

1600.....11516

1601.....11516

1605.....11516

1620.....11516

1631.....11516

1640.....11516

1645.....11516

1650.....11516

1651.....11516

1653.....11516

1655.....11516

1690.....11516

7 CFR

3560.....11275

9 CFR

201.....11933

10 CFR

50.....11934

Proposed Rules:

20.....12254

26.....12254

50.....11986, 12254

51.....12254

52.....12254

72.....12254

73.....12254

140.....12254

429.....11892

430.....11326, 11327, 11892,
11990

431.....11335, 11650

11 CFR

111.....11950

12 CFR

Ch. X.....11286, 11951

Proposed Rules:

700.....11996

701.....11996

702.....11996

708a.....11996

708b.....11996

750.....11996

790.....11996

14 CFR

39.....11289

71.....11954, 11955

95.....11290

Proposed Rules:

39.....11355

71.....11358, 11359, 11361,
11362, 11364, 11657, 12000,
12001

15 CFR

734.....12226

738.....12226

740.....12226

742.....12226

744.....12226

746.....12226

772.....12226

16 CFR

Proposed Rules:

4.....12003

1112.....11366

1261.....11366

17 CFR

Proposed Rules:

240.....11659

21 CFR

888.....11293

1141.....11295

26 CFR

300.....11295

Proposed Rules:

300.....11366

31 CFR

587.....11297

Proposed Rules:

223.....12003

285.....11660

33 CFR

100.....11304

165.....11305, 11308, 11581,
11583

402.....11585

Proposed Rules:

165.....11371

34 CFR

81.....11309

36 CFR

Proposed Rules:

251.....11373

39 CFR

111.....11587

40 CFR	41 CFR	304-5.....12048	552.....11589
52 .....11310, 11957, 11959	Proposed Rules:	44 CFR	50 CFR
55 .....11961	300-3.....12048	1.....11971	229.....11590, 11978
158.....11312	300-70.....12048	47 CFR	622.....11596
180 .....11312, 11315, 11319, 11965	301-2.....12048	73.....11588	635.....11322
Proposed Rules:	301-10.....12048	Proposed Rules:	660.....11597
52 .....11373, 11664, 12016, 12020, 12033	301-11.....12048	1.....11379	679.....11599, 11626
81 .....11664, 12020, 12033	301-13.....12048	27.....11379	Proposed Rules:
	301-53.....12048	48 CFR	17.....12056, 12338
	301-70.....12048	538.....11589	648.....11680
	301-71.....12048		660.....11382
	App. C. to Ch. 301 .....12048		
	304-3.....12048		

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List February 25, 2022

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