FEDERAL REGISTER

Vol. 87 Wednesday

No. 248 December 28, 2022

Pages 79787–79976

OFFICE OF THE FEDERAL REGISTER

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

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Contents

Federal Register

Vol. 87, No. 248

Wednesday, December 28, 2022

Agriculture Department
See Natural Resources Conservation Service
See Office of Partnerships and Public Engagement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 79849

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer, 79907–79908

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 79890–79891

Coast Guard
RULES
Safety Zones:
Chinese Harbor, Santa Cruz Island, CA, 79804–79806

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Generic Clearance for Requests for Meetings and Registrations for Events and Conferences, 79855
Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, 79856

Council on Environmental Quality
NOTICES
Requests for Nominations:
Carbon Dioxide Capture, Utilization and Sequestration Federal Lands and Outer Continental Shelf Permitting Task Force, 79876–79878
Carbon Dioxide Capture, Utilization and Sequestration Non-Federal Lands Permitting Task Force, 79875–79876

Drug Enforcement Administration
NOTICES
Importer, Manufacturer or Bulk Manufacturer of Controlled Substances; Application, Registration, etc.:
Isosciences, LLC, 79908–79909

Education Department
PROPOSED RULES
Priorities, Requirements, Definitions, and Selection Criteria:
State Tribal Education Partnership Program, 79824–79830
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Form for Maintenance of Effort Waiver Requests, 79878

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 79878–79879

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
California; San Joaquin Valley Unified Air Pollution Control District; South Coast Air Quality Management District, 79806–79808
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Georgia; Macon Area Limited Maintenance Plan for the 1997 8-Hour Ozone National Ambient Air Quality Standards, 79830–79836
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Data Requirements Rule for the 1-Hour Sulfur Dioxide Primary National Ambient Air Quality Standard, 79887–79888
National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing Area Sources (Renewal), 79885–79886
New Source Performance Standards for Hospital/Medical/Infectious Waste Incinerators, 79886–79887

Executive Office for Immigration Review
RULES
Security Bars and Processing; Delay of Effective Date, 79789–79794

Federal Aviation Administration
RULES
Airworthiness Directives:
Bell Textron Canada Limited Helicopters, 79794–79798
Rolls-Royce Deutschland Ltd and Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines, 79798–79801
PROPOSED RULES
Airworthiness Directives:
Airbus SAS Airplanes, 79819–79821
Allied Ag Cat Productions, Inc. Airplanes, 79821–79823

Federal Communications Commission
NOTICES
Sponsorship Identification Requirements for Foreign Government-Provided Programming, 79888–79889

Federal Energy Regulatory Commission
NOTICES
Application:
Allete, Inc., 79880–79881
Eagle Creek Racine Hydro, LLC, 79881–79882
Lewis Ridge Pumped Storage, LLC, 79881
Authorization for Continued Project Operation:
Moretown Hydroelectric, LLC, 79879–79880

Combined Filings, 79882–79885
Filing:
City of Pasadena, CA, 79884
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Foxhound Solar, LLC, 79885
NTUA Generation—Utah, LLC, 79880–79881
Institution of Section 206 Proceeding and Refund Effective Date:
Basin Electric Power Cooperative, 79880

Federal Maritime Commission
NOTICES
Agreements Filed, 79889

Federal Motor Carrier Safety Administration
NOTICES
Exemption Application:
Commercial Driver's License Standards: Stevens Transport, Inc., 79931–79932
Entry-Level Driver Training; Alaska, 79932–79935
Hours of Service of Drivers; Renewal of American Pyrotechnics Association Exemptions From the 14-Hour Rule and the Electronic Logging Device Rule During Independence Day Celebrations, 79935–79938

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 79889–79890

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Species:
Designation of Critical Habitat for 'I'iwi, 79942–79975
NOTICES
Endangered and Threatened Species:
Incidental Take Permit Application; Proposed Habitat Conservation Plan Amendment for the Multiple Species Conservation Program County of San Diego Subarea Plan, County of San Diego, CA, 79900–79901
Northeast Canyons and Seamounts Marine National Monument:
Proposed Joint Monument Management Plan, 79901–79903

Food and Drug Administration
RULES
Medical Devices:
Cardiovascular Devices; Classification of the Interventional Cardiovascular Implant Simulation Software Device, 79801–79803

Foreign Assets Control Office
RULES
Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 8D and 40C, 79803–79804

Foreign-Trade Zones Board
NOTICES
Proposed Production Activity:
Par Hawaii Refining, LLC (Renewable Fuels), Kapolei, HI; Foreign-Trade Zone 9, Honolulu, HI, 79857–79858
TSMC Arizona Corp. (Semiconductor Wafers), Foreign-Trade Zone 75, Phoenix, AZ, 79856–79857

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Meetings:
Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, 79893–79894

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Data Collection Tool for State Offices of Rural Health Grant Program, 79891–79892
National Vaccine Injury Compensation Program:
List of Petitions Received, 79892–79893

Homeland Security Department
See Coast Guard
See Transportation Security Administration
RULES
Security Bars and Processing; Delay of Effective Date, 79789–79794

Interior Department
See Fish and Wildlife Service
See Reclamation Bureau

Internal Revenue Service
NOTICES
Superfund Chemical Substance Tax:
Request To Modify List of Taxable Substances; Filing of Petition for Polyoxymethylene, 79938–79939

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman, 79865–79867
Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates, 79862–79865
Multilayered Wood Flooring From the People's Republic of China, 79859–79862
Paper Clips From the People's Republic of China, 79858
Paper File Folders From India, 79858–79859
Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings, 79867–79868

International Trade Commission
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Emulsion Styrene-Butadiene Rubber From Brazil, Mexico, Poland, and South Korea; Full Five-Year Reviews, 79905–79906
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Smart Thermostat Hubs, Systems Containing the Same, and Components of the Same, 79905
Steel Nails From the United Arab Emirates; Full Five-Year Review, 79907

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration

See Executive Office for Immigration Review

National Credit Union Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 79909

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 79894, 79897
National Cancer Institute, 79896
National Institute of Allergy and Infectious Diseases, 79896–79897
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 79897
National Institute of Diabetes and Digestive and Kidney Diseases, 79895–79896, 79899
National Institute of General Medical Sciences, 79895–79899
National Institute on Aging, 79895, 79898

National Oceanic and Atmospheric Administration
RULES
Endangered and Threatened Species:
Designation of a Nonessential Experimental Population of Central Valley Spring-Run Chinook Salmon in the Upper Yuba River Upstream of Englebright Dam, etc., 79808–79818
PROPOSED RULES
Magnuson-Stevens Fishery Conservation and Management Act:
Seafood Import Monitoring Program, 79836–79848
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Atlantic Herring Amendment 5 Data Collection, 79873–79874
Mandatory Shrimp Vessel and Gear Characterization Survey, 79872–79873
Statement of Financial Interests, Regional Fishery Management Councils, 79868–79869
Fisheries of the Exclusive Economic Zone Off Alaska:
North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Program, 79869–79872
Northeast Canyons and Seamounts Marine National Monument:
Proposed Joint Monument Management Plan, 79901–79903

National Science Foundation
NOTICES
Antarctic Conservation Act Permit Applications, 79910
Penalty Inflation Adjustments for Civil Monetary Penalties, 79910

National Telecommunications and Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Communications Supply Chain Risk Information Partnership Supplemental Information Gathering, 79874–79875

Natural Resources Conservation Service
NOTICES
Environmental Impact Statements; Availability, etc.:
West Fork Battle Creek Watershed Plan, Carbon County, WY, 79850–79854

Nuclear Regulatory Commission
NOTICES
Environmental Assessments; Availability, etc.:
Southern California Edison, San Onofre Nuclear Generating Station, Units 1, 2, and 3, 79910–79911

Office of Partnerships and Public Engagement
NOTICES
Meetings:
Advisory Committee on Minority Farmers, 79854–79855

Postal Regulatory Commission
NOTICES
New Postal Products, 79911–79912

Presidential Documents
ADMINISTRATIVE ORDERS
Foreign Assistance Act of 1961; Delegation of Authority Under Section 506(a)(1) (Memorandum of December 21, 2022), 79787

Reclamation Bureau
NOTICES
Requests for Nominations:
Glen Canyon Dam Adaptive Management Work Group Federal Advisory Committee, 79904–79905
Tribal Notice To Consult on Implementation of the Inflation Reduction Act, 79903–79904

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 79915, 79919
Application:
Forum Real Estate Income Fund, et al., 79914–79915
Self-Regulatory Organizations; Proposed Rule Changes:
ICE Clear Credit, LLC, 79922–79924
Nasdaq MRX, LLC, 79912, 79915–79918, 79924–79930
New York Stock Exchange, LLC, 79912–79914
NYSE Arca, Inc., 79919–79922

Small Business Administration
NOTICES
Conflict of Interest Exemptions:
Convergent Capital Partners IV, LP, 79930
New Canaan Funding Mezzanine VII SBIC, LP, 79930

State Department
NOTICES
Meetings:
Advisory Committee on Private International Law, Final Report of the Experts Group on Parentage/Surrogacy Project of the Hague Conference on Private International Law, 79930–79931

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration

Transportation Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Pipeline Corporate Security Reviews and Security Directives, 79899–79900

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a Department of Veterans Affairs National Cemetery, 79939–79940
Reimbursement for Caskets and Urns for Burial of Unclaimed Remains in a National Cemetery or a VA-Funded State or Tribal Veterans' Cemetery, 79939

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 79942–79975

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

Administrative Orders:

Memorandums:

Memorandum of December 21, 2022 79787

8 CFR

208.....79789
1208.....79789

14 CFR

39 (2 documents) 79794, 79798

Proposed Rules:

39 (2 documents) 79819, 79821

21 CFR

870.....79801

31 CFR

587.....79803

33 CFR

165.....79804

34 CFR

Proposed Rules:

Ch. II 79824

40 CFR

52.....79806

Proposed Rules:

52.....79830

50 CFR

223.....79808

Proposed Rules:

17.....79942
300.....79836
600.....79836

Federal Register
Vol. 87, No. 248
Wednesday, December 28, 2022

Presidential Documents

Title 3—

The President

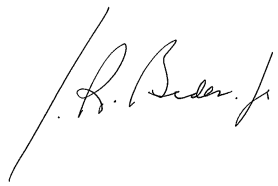
Memorandum of December 21, 2022

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $1 billion in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, December 21, 2022

[FR Doc. 2022–28355
Filed 12–27–22; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 87, No. 248
Wednesday, December 28, 2022

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[CIS No. 2670–20; Docket No: USCIS 2020–0013]

RIN 1615–AC57

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1208

[A.G. Order No. 5577–2022]

RIN 1125–AB08

Security Bars and Processing; Delay of Effective Date

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: On December 23, 2020, the Department of Homeland Security (''DHS'') and the Department of Justice (''DOJ'') (collectively, ''the Departments'') published a final rule (''Security Bars rule''), to clarify that the ''danger to the security of the United States'' standard in the statutory bar to eligibility for asylum and withholding of removal encompasses certain emergency public health concerns and to make certain other changes. This rule would have made a noncitizen ineligible for asylum if, among other things, the noncitizen was physically present in a country in which a communicable disease was prevalent or epidemic, and the Secretary of Homeland Security and the Attorney General determined that the physical presence in the United States of noncitizens coming from that country would cause a danger to the public health. That rule was scheduled to take effect on January 22, 2021, but, as of January 21, 2021, the Departments delayed the rule's effective date for 60 days to March 22, 2021. The Departments subsequently further delayed the rule's effective date to December 31, 2021, and most recently to December 31, 2022. In this rule, the Departments are further extending the delay of the effective date of the Security Bars rule until December 31, 2024. The Departments are soliciting comments both on the delay until December 31, 2024, and whether the effective date of the Security Bars rule should be delayed beyond that date.

DATES:

Effective date: As of December 28, 2022, the effective date of the final rule published December 23, 2020, at 85 FR 84160, which was delayed by the rules published at 86 FR 6847 (Jan. 25, 2021), 86 FR 15069 (Mar. 22, 2021), and 86 FR 73615 (Dec. 28, 2021), is further delayed until December 31, 2024.

Submission of public comments: Comments must be submitted on or before February 27, 2023.

ADDRESSES: You may submit comments on this rule, identified by DHS Docket No. USCIS 2020–0013, through the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the website instructions for submitting comments. Comments submitted in a manner other than the one listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the rule and may not receive a response from the Departments. Please note that the Departments cannot accept any comments that are hand-delivered or couriered. In addition, the Departments cannot accept comments contained on any form of digital media storage devices, such as CDs, DVDs, and USB drives. The Departments are not accepting mailed comments at this time. If you cannot submit your comment by using *http://www.regulations.gov,* please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services (''USCIS''), Department of Homeland Security, by telephone at (240) 721–3000 (not a toll-free call) for alternate instructions.

FOR FURTHER INFORMATION CONTACT:

For USCIS: Rená Cutlip-Mason, Chief, Division of Humanitarian Affairs, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20588–0009; telephone (240) 721–3000 (not a toll-free call).

For the Executive Office for Immigration Review: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, Department of Justice, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to submit comments on this action to further delay the effective date of the Security Bars rule by submitting relevant written data, views, or arguments. To provide the most assistance to the Departments, comments should reference a specific portion of the rule; explain the reason for any recommendation; and include data, information, or authority that supports the recommended course of action. Comments must be submitted in English, or an English translation must be provided. Comments submitted in a manner other than those listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the rule and may not receive a response from the Departments.

Instructions: If you submit a comment, you must include the agency name and the DHS Docket No. USCIS 2020–0013 for this rulemaking. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to the Departments. The Departments may withhold information provided in comments from public viewing that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at *http://www.regulations.gov*.

Docket: For access to the docket and to read background documents or comments received, go to *http://www.regulations.gov,* referencing DHS Docket No. USCIS 2020–0013. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

II. Background

On December 23, 2020, the Departments published the Security Bars rule to amend existing regulations to clarify that in certain circumstances there are ''reasonable grounds for regarding [a noncitizen] [1] as a danger to the security of the United States'' or ''reasonable grounds to believe that [a noncitizen] is a danger to the security of the United States'' based on emergency public health concerns generated by a communicable disease, making the noncitizen ineligible to be granted asylum in the United States under section 208 of the Immigration and Nationality Act (''INA'' or ''the Act''), 8 U.S.C. 1158, or the protection of withholding of removal under the Act or subsequent regulations (because of the threat of torture).[2] The rule was scheduled to take effect on January 22, 2021.

On January 20, 2021, the White House Chief of Staff issued a memorandum asking agencies to consider delaying, consistent with applicable law, the effective dates of any rules that had been published and had not yet gone into effect for the purpose of allowing the President's appointees and designees to review questions of fact, law, and policy raised by those regulations. *See* Memorandum for the Heads of Executive Departments and Agencies from Ronald A. Klain, Assistant to the President and Chief of Staff, *Re: Regulatory Freeze Pending Review* (Jan. 20, 2021), *available at* 86 FR 7424 (Jan. 28, 2021). As of January 21, 2021, the Departments delayed the effective date of the Security Bars rule to March 22, 2021, then further delayed the effective date of the Security Bars rule to December 31, 2021, and most recently delayed the effective date of the Security Bars rule to December 31, 2022, consistent with that memorandum and a preliminary injunction in place with respect to a related rule, as discussed below. *See* Security Bars and Processing; Delay of Effective Date, 86 FR 6847 (Jan. 25, 2021); Security Bars and Processing; Delay of Effective Date, 86 FR 15069 (Mar. 22, 2021) (''March 2021 Delay IFR''); Security Bars and Processing; Delay of Effective Date, 86 FR 73615 (Dec. 28, 2021) (''December 2021 Delay IFR'').

III. Basis for Delay of Effective Date

A. Impact of Injunction Against Implementation of Global Asylum Final Rule

As stated in the March 2021 Delay IFR, the Departments had good cause to further delay the Security Bars rule's effective date without advance notice and comment because implementation of the Security Bars rule was infeasible due to a preliminary injunction against a related rule.[3] Specifically, the Security Bars rule relies on revisions to the Departments' regulations previously made on December 11, 2020, by a separate joint rule, Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review (''Global Asylum final rule'').[4] The Global Asylum final rule was scheduled to become effective before the Security Bars rule. However, on January 8, 2021, 14 days prior to the effective date of the Security Bars rule, in *Pangea Legal Services* v. *Department of Homeland Security (''Pangea II''),* a district court preliminarily enjoined the Departments ''from implementing, enforcing, or applying the [Global Asylum final] rule . . . or any related policies or procedures.'' [5] The preliminary injunction remains in place. Thus, implementation of the Security Bars rule continues to be infeasible.

The Security Bars rule relies upon the regulatory framework that was established in the Global Asylum final rule in applying bars to asylum eligibility and withholding of removal during credible fear screenings for noncitizens in the expedited removal process.[6] The expedited removal process allows for the removal of certain noncitizens from the United States without a removal proceeding before an immigration judge under section 240 of the Act, 8 U.S.C. 1229a. A noncitizen who expresses a fear of persecution or torture, a fear of return, or an intention to apply for asylum during the course of the expedited removal process is referred to a USCIS asylum officer for a credible fear screening to determine if the noncitizen has a credible fear of persecution or torture in the country of removal.[7] If the asylum officer determines that a noncitizen has a credible fear of persecution or torture, DHS may either: (1) refer the noncitizen to an immigration court by initiating removal proceedings under section 240 of the INA, 8 U.S.C. 1229a (''section 240 removal proceedings''), where the noncitizen may seek relief or protection, or (2) retain jurisdiction over the noncitizen's asylum claim for further consideration in an interview pursuant to 8 CFR 208.9(b).[8]

On July 9, 2020, the Departments published a Notice of Proposed Rulemaking for the Security Bars rule (''2020 Security Bars NPRM''), which proposed regulatory text to apply the security bars during credible fear screenings.[9] This proposal would have modified the then-existing regulatory framework, which instructed that, even if the noncitizen might have been subject to a bar to asylum eligibility or withholding of removal (including the ''danger to the security of the United States'' bars underlying the Security Bars rule), the potential applicability of that bar would not have impacted their credible fear determination.[10] The modification in the Security Bars NPRM would have applied these security bars during the credible fear screening rather than during a full removal hearing. The 2020 Security Bars NPRM justified the application of the security bars in the credible fear determination process as necessary to allow DHS to quickly remove individuals covered by the expanded security bars to asylum eligibility and withholding of removal, rather than sending potentially barred individuals to section 240 removal proceedings, for consideration of further relief or protection from removal before an immigration judge, which can take more time.[11] The 2020 Security Bars

[1] For purposes of the discussion in this rule, the Departments use the term ''noncitizen'' to be synonymous with the term ''alien'' as it is used in the INA. *See* Immigration and Nationality Act, 101(a)(3), 8 U.S.C. 1101(a)(3).

[2] *See* Security Bars and Processing, 85 FR 84160 (Dec. 23, 2020).

[3] *See* 86 FR at 15070.

[4] *See* 85 FR 80274 (Dec. 11, 2020).

[5] *Pangea Legal Servs.* v. *U.S. Dep't of Homeland Sec.,* 512 F. Supp. 3d 966, 977 (N.D. Cal. 2021). By issuing this rule to further delay the effective date of the Security Bars rule, the Departments are not indicating a position on the outcome thus far in *Pangea II.*

[6] *See, e.g.,* 85 FR at 84176 (''As noted, the [Security Bars] final rule is not, as the [2020 Security Bars] NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at the credible fear stage because, in the interim between the NPRM and the final rule, the Global Asylum [final rule] did so for all of the bars to eligibility for asylum and withholding of removal.''); *id.* at 84189 (describing changes made in the Security Bars rule ''to certain regulatory provisions not addressed in the proposed rule as necessitated by the intervening promulgation of the Global Asylum [final rule]'').

[7] *See* INA 235(b)(1)(A)(ii), (B), 8 U.S.C. 1225(b)(1)(A)(ii), (B); *see also* 8 CFR 235.3(b)(4)(i), 1235.3(b)(4)(i).

[8] *See* 8 CFR 208.2(a)(1)(ii), 208.30(f), 1208.2(a)(1)(ii), 1235.6(a)(1)(i).

[9] Security Bars and Processing, 85 FR 41201, 41216–18 (July 9, 2020).

[10] *See id.* at 41207.

[11] *See id.* at 41210–12.

NPRM further explained that applying the security bars during credible fear screenings was necessary to reduce health and safety dangers to both the public at large and DHS officials.[12]

On December 11, 2020, while the Departments were reviewing the comments submitted in response to the 2020 Security Bars NPRM, the Global Asylum final rule was published.[13] The Global Asylum final rule changed the governing regulations to apply all bars to asylum eligibility and withholding of removal during credible fear screenings.[14] Most relevant, the Global Asylum final rule changed the then-existing regulatory framework described above, in which evidence of a bar to asylum eligibility or withholding of removal did not have any impact on a credible fear determination (even though the bars would be part of the ultimate adjudication of asylum eligibility or withholding of removal before the Executive Office for Immigration Review), to a framework that instead required asylum officers to apply all of the bars to asylum eligibility or withholding of removal during credible fear screenings.[15]

On December 23, 2020, the Security Bars rule was published. In that final rule, the Departments revised the text from the 2020 Security Bars NPRM to explicitly rely on the intervening changes made by the Global Asylum final rule.[16] As a result, the regulatory text of significant portions of the Security Bars rule relies upon and repeats broader regulatory text established by the Global Asylum final rule, such as applying bars to asylum eligibility and withholding of removal during credible fear screenings.[17] The Security Bars rule assumed that the Global Asylum final rule would be in effect, and, therefore, the Security Bars rule did not make additional changes to the credible fear framework.[18]

The Security Bars rule, if it were to become effective as published, would bar two broad categories of noncitizens who ''pose a danger to the security of the United States'' from eligibility for asylum, statutory withholding of removal, and withholding of removal under regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (''CAT'') [19]; and would alter the screening processes for eligibility for CAT deferral of removal in credible fear interviews.[20] The Security Bars rule provided that, if an asylum officer determined that a noncitizen was subject to the bars outlined in the rule, the asylum officer would screen the noncitizen for potential eligibility for deferral of removal under the CAT regulations (''CAT deferral of removal'') by determining whether it was ''more likely than not'' that the noncitizen would be tortured in the prospective country of removal.[21]

As a result of the interplay between the two rules, implementation of the Security Bars rule would violate the injunction against the application, implementation, or enforcement of the Global Asylum final rule and related policies or procedures. Effective implementation of the Security Bars rule relies on the application of the asylum and withholding of removal bars to eligibility at the credible fear screening stage, as established by the Global Asylum final rule.[22] Accordingly, implementing the Security Bars rule would effectively reinsert or rely upon regulatory provisions enjoined by the *Pangea II* court. In other words, under the *Pangea II* injunction, it would be impermissible to apply the bars to asylum eligibility and withholding of removal outlined in the Security Bars rule to noncitizens in the credible fear screening process. Given these circumstances, the Departments believe that the Security Bars rule, which could not be implemented as designed, would not necessarily provide the framework for achieving its intended goals.

B. Impact of Asylum Processing IFR

On March 29, 2022, the Departments published an interim final rule titled Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers (''Asylum Processing IFR'').[23] The Asylum Processing IFR became effective on May 31, 2022.[24] The Asylum Processing IFR amended the governing regulations to allow USCIS asylum officers to adjudicate the asylum applications of individuals subject to expedited removal who are found to have a credible fear of persecution or torture.[25]

The Asylum Processing IFR also amended certain regulations modified in part by the Security Bars rule to return to the regulatory framework governing credible fear screening standards and, with limited exceptions, applicability of mandatory bars at the credible fear screening stage that had been in place before the Global Asylum final rule was promulgated.[26] In particular, the Asylum Processing IFR revised the regulations governing the credible fear screening process to apply the longstanding ''significant possibility'' standard in screenings for statutory withholding of removal and CAT protection claims.[27] And, with limited exceptions, the Asylum Processing IFR revised the regulatory framework to return to longstanding regulations to screen for eligibility for asylum and statutory withholding of removal without applying bars to asylum and withholding of removal in the credible fear screening process.[28] The regulatory changes made by the Asylum Processing IFR do not include the applicability of the bars outlined in the Security Bars rule.[29]

If the Security Bars rule were to become effective as published, then, when combined with the changes made by the Asylum Processing IFR to the regulations governing the credible fear screening framework and standards, the result would be to create confusing and nonsensical regulatory text. The Asylum

[12] *See id.* at 41210.

[13] 85 FR at 80274.

[14] *See id.* at 80391.

[15] *See id.*

[16] 85 FR at 84174–77.

[17] *Compare e.g., id.* at 84194–98 (revisions to 8 CFR 208.30, 235.6, 1208.30, 1235.6, and other provisions in the Security Bars rule), *with, e.g.,* 85 FR at 80390–80401 (revisions to same sections in the Global Asylum final rule).

[18] *See* 85 FR at 84175 (''The Departments note that the final rule is not, as the NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at the credible fear stage. In the interim between the NPRM and the final rule, the Global Asylum [final rule] did so for all of the bars to eligibility for asylum and withholding of removal.'').

[19] CAT, Dec. 10, 1984, S. Treaty Doc. No. 100–20 (1988), 1465 U.N.T.S. 85.

[20] *See id.* at 84160, 84174.

[21] *See id.* at 84194–95.

[22] As the Departments explained in the Security Bars rule, the intervening Global Asylum final rule made changes to the credible fear screening framework to provide that noncitizens receiving positive credible fear determinations be placed in asylum-and-withholding-only proceedings, rather than section 240 removal proceedings. *See* 85 FR at 84188. The Security Bars rule relied upon this change made in the Global Asylum final rule to provide that noncitizens who receive positive credible fear determinations under the Security Bars rule would be placed in such asylum-and-withholding-only proceedings rather than section 240 removal proceedings, unless they were removed to third countries. *See id.* The Security Bars rule also assumes that the Departments are using the reasonable possibility of persecution or torture standards for withholding of removal claims in the credible fear screening context, which is also based on a change that was made in the Global Asylum final rule. *See id.* at 84188, 84191.

[23] *See* 87 FR 18078.

[24] The implementation of the Asylum Processing IFR is taking place in a phased manner, beginning with a small number of individuals, and will grow as USCIS builds operational capacity over time. *See* 87 FR at 18185.

[25] *See id.* at 18089.

[26] *See id.* at 18084, 18091–94.

[27] *See id.* at 18084, 18091–92.

[28] *See id.* at 18121–22, 18084, 18092–94.

[29] *See id.* at 18121–22, 18084, 18091–94.

Processing IFR revised regulatory language in 8 CFR 208.30, 235.6, 1003.42, 1208.30, and 1235.6 that the Security Bars rule assumed would be in effect, but which now no longer exists in the CFR. For example, in 8 CFR 208.30(f), the Security Bars rule revised the regulatory language that existed at the time to incorporate the ''more likely than not'' standard, which is related to evaluating eligibility for CAT deferral of removal when an individual is subject to the security bars outlined in the Security Bars rule.[30] The Asylum Processing IFR revised 8 CFR 208.30(f) significantly, so the regulatory text that existed at the time of the publication of the Security Bars rule no longer exists in the current version of 8 CFR 208.30(f) in the CFR.[31] Additional examples include 8 CFR 208.30(e)(4), (e)(5), 235.6(a)(2), 1003.42(d)(1), 1208.30(e), (g)(2), and 1235.6(a)(2). *Compare, e.g.,* 85 FR at 84191, 84196 (portion of Security Bars rule amending 8 CFR 235.6(a)(2) to ''reflect the new screening standard for potential eligibility for deferral of removal'' established in the Global Asylum final rule by providing for the next procedural steps ''[i]f an asylum officer determines that the [noncitizen] has not established a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or that it is more likely than not that the [noncitizen] would be tortured''), *with, e.g.,* 87 FR at 18220 (portion of Asylum Processing IFR amending the same section, 8 CFR 235.6(a)(2), to omit any reference to a ''reasonable possibility of persecution, reasonable possibility of torture, or [whether] it is more likely than not that the [noncitizen] would be tortured'').

Further, if the Security Bars rule were to become effective as published, the regulations would not coherently interrelate when viewed individually or as a whole, which would create substantial confusion and disorder in the credible fear screening process. The intervening Asylum Processing IFR has made significant changes to the regulations governing the credible fear screening framework and standards, and because these changes are incompatible with applying the Security Bars rule according to its terms, these intervening regulatory changes further justify delaying the effective date of the Security Bars rule.

Accordingly, the Departments are further delaying the effective date of the Security Bars rule until December 31, 2024, due to the aforementioned litigation and the intervening Asylum Processing IFR. The Departments believe that a delay of two years, rather than a shorter delay, is appropriate. If the injunction against implementation of the Global Asylum final rule were lifted, the Departments would need to consider how the regulatory changes that the Asylum Processing IFR made to the credible fear screening framework and standards impact the regulatory text of the Security Bars rule. Given the numerous procedural inconsistencies between the Asylum Processing IFR and the Security Bars rule, as discussed above, the Departments believe that determining how to feasibly apply both rules (or whether such application is feasible at all) would require substantial time. Also, as discussed below, the Departments are planning to issue a notice of proposed rulemaking to modify or rescind the Security Bars rule in the near future. The Departments would need to consider whether attempting to apply the Security Bars rule at all would be consistent with any policy considerations raised by that forthcoming NPRM to modify or rescind the Security Bars rule.

C. Rulemaking To Modify or Rescind Security Bars Rule

The Departments are reconsidering the Security Bars rule in light of the Administration's policies of ensuring the safe and orderly reception and processing of asylum seekers, consistent with public health and safety, strengthening the asylum system, and removing barriers that impede access to immigration benefits, with the additional context of the complex relationship between the Global Asylum final rule and the Security Bars rule and the court's injunction in *Pangea II*.[32] The Departments are reevaluating whether the Security Bars rule provides the most appropriate and effective framework for achieving its goals of mitigating the spread of communicable diseases, including COVID–19, among certain noncitizens in the credible fear screening process, as well as DHS personnel and the public. The Departments are working to publish a separate NPRM in the near future to solicit public comments on whether to modify or rescind the Security Bars rule (''forthcoming Security Bars NPRM'').[33] The Departments, in publishing the December 2021 Delay IFR, anticipated that this rulemaking would be complete by December 31, 2022. However, competing priorities have resulted in delays in publishing the forthcoming Security Bars NPRM. In light of the limits on the Departments' resources, they have been required to prioritize efforts based on the most pressing needs, which include, but are not limited to, litigation constraints, *see, e.g.,* Deferred Action for Childhood Arrivals, 87 FR 53152 (Aug. 30, 2022), and building an orderly process to address increasing numbers of individuals coming to the United States, *see, e.g.,* Asylum Processing IFR, 87 FR 18078.

Accordingly, the Departments are further delaying the effective date of the Security Bars rule until December 31, 2024. The Departments believe that, rather than a one-year delay, as they issued in December of 2021, a two-year delay of the effective date will better ensure that there is sufficient time to complete notice-and-comment rulemaking to modify or rescind the Security Bars final rule, even in the event that circumstances require shifting departmental priorities and resources. The Departments believe that a two-year delay will allow sufficient time for the Departments to issue the forthcoming Security Bars NPRM, give careful and meaningful consideration to comments received on the forthcoming Security Bars NPRM, and issue a final rule.

In the March 2021 Delay IFR, the Departments explained that they were considering amending or rescinding the Security Bars rule and sought public comments on whether the Security Bars rule should be revised or revoked and information on alternative approaches that may achieve the best public health outcome consistent with the Administration's immigration policy goals.[34] The Departments received 66 comments in response to the March 2021 Delay IFR. As stated in the December 2021 Delay IFR, the Departments plan to address comments regarding modification or rescission of the Security Bars rule in a separate rulemaking. *See* 86 FR at 73617. A number of the commenters expressed

[30] *See* 85 FR at 84194–95.

[31] *See* 87 FR at 18219.

[32] *See, e.g.,* E.O. 14010, 86 FR 8267 (Feb. 2, 2021) (Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border); E.O. 14012, 86 FR 8277 (Feb. 2, 2021) (Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans); *see also* Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs, Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions, Security Bars and Processing, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1615-AC57*.

[33] Members of the public may follow the progress of the forthcoming Security Bars NPRM on the Administration's Unified Agenda of Regulatory and Deregulatory Actions, which is available at *https://www.reginfo.gov/public/do/eAgendaMain*.

[34] *See* 86 FR at 15069, 15071.

support or opposition to the substance of the Security Bars rule as part of their response to the Departments' March 2021 Delay IFR. Although a few of the commenters supported the Security Bars rule, the majority of the commenters opposed the rule. Subsequently, the Departments published the December 2021 Delay IFR on December 28, 2021, in which they ''continue[d] to welcome data, views, and information regarding the effective date of the Security Bars rule.'' 86 FR at 73617. The Departments received 15 unduplicated comments in response to the December 2021 Delay IFR, 13 of which expressed opposition to the Security Bars Final Rule. Two commenters supported implementation of the Security Bars Final Rule without specifically discussing a delay beyond December 31, 2021, although one stated that the policy should not be delayed. Among commenters who opposed the Security Bars final rule, one suggested it be ''delayed indefinitely,'' and two supported further delay of the rule while also urging rescission of the rule. Additionally, four commenters—including one joint comment of 135 non-governmental organizations—urged immediate rescission of the final rule rather than continuing to delay its effective date. Finally, some commenters responding to the March 2021 Delay IFR specifically addressed the question of a delayed effective date. Two of these commenters urged the Departments to implement the Security Bars rule without further delay, and one supported the delay. To the extent the comments received in response to each IFR delaying the effective date of the Security Bars rule address the substance of the Security Bars rule beyond the question of the effective date, including suggestions to modify or rescind the rule, the Departments will consider those comments, and the comments on the forthcoming Security Bars NPRM, in promulgating a final rule based on that NPRM.

To the extent the comments received in response to the March 2021 Delay IFR and the December 2021 Delay IFR address the further delay of the Security Bars rule, the Departments have considered those comments and have determined that a two-year further delay is most appropriate. Several commenters, as noted, opposed delay, but the Departments have concluded that a further delay of at least some length is necessary to ensure the Departments are not required to try to apply both the Asylum Processing IFR and the Security Bars rule without sufficient time to consider the many inconsistencies between those rules. Another commenter, as noted, suggested an indefinite delay, but the Departments believe an indefinite delay is unnecessary at this time because the Departments' forthcoming Security Bars NPRM will be completed at some point in the near future, and, once that rulemaking process is finalized, that rulemaking could obviate the need for an indefinite delay by modifying or rescinding the Security Bars rule. Finally, the remaining commenters who mentioned the possibility of further delay did not cite any specific reasons for a delay of a particular length, and the Departments have concluded that two years is an appropriate duration. The Departments acknowledge the desire of some commenters to rescind the Security Bars rule without further delaying its effective date. However, as discussed in this rule, the Departments intend to publish the forthcoming Security Bars NPRM in the near future to address the issue of possible modification or rescission. The Departments note that thousands of comments were received in response to the 2020 Security Bars NPRM. The Departments anticipate that they may similarly receive a substantial volume of comments in response to the forthcoming Security Bars NPRM. They accordingly believe it is prudent to delay the Security Bars rule's effective date for two years to ensure sufficient time to carefully review, consider, and respond to comments in promulgating a final rule—especially in light of the Departments' potentially competing rulemaking priorities—and avoid the need for additional IFRs to further delay the Security Bars rule's effective date before the anticipated final rule can become effective. *See Massachusetts* v. *E.P.A.,* 549 U.S. 497, 527 (2007) (''[A]n agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities.'').

The Departments recognize that the COVID–19 public health emergency is highly dynamic and continues to pose health and safety risks for noncitizens held in congregate settings, particularly at holding and detention facilities; for agency personnel; and for the public.[35] As the COVID–19 public health emergency has continued to evolve, the Departments continue to reconsider and reevaluate how best to mitigate the spread of COVID–19 and which actions are most appropriate in accordance with their legal authorities.

IV. Request for Comment on Further Delay of the Effective Date of the Security Bars Rule

The Departments continue to welcome data, views, and information regarding the effective date of the Security Bars rule. The Departments also are soliciting comments on whether the effective date should be delayed beyond December 31, 2024. The Departments note that comments addressing whether the Security Bars rule should be modified or rescinded should be submitted in response to the forthcoming Security Bars NPRM, and not in response to this interim final rule.

V. Regulatory Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (''APA''), agencies must generally provide ''notice of proposed rule making'' in the **Federal Register** and, after such notice, ''give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.'' 5 U.S.C. 553(b)–(c). In the December 2021 Delay IFR, the Departments notified the public that they were considering ''whether the effective date of the Security Bars rule should be extended beyond [the December 31, 2022] date'' and specifically ''solicit[ed] comments'' on such a delay. 86 FR at 73615; *see also id.* at 73617 (welcoming any ''data, views, and information regarding the effective date of the Security Bars rule,'' including comments on whether the effective date ''should be extended beyond December 31, 2022, if the *Pangea II* injunction is still in effect or if other intervening events occur''). As discussed above, the Departments have considered the comments received in response to the notice and request for comments in the December 2021 Delay IFR and have decided for the reasons articulated above to delay the effective date of the Security Bars rule until December 31, 2024. Both the *Pangea II* injunction and intervening events such as the publication of the Asylum Processing IFR make continued delay of the Security Bars rule necessary. In addition, a two-year delay appropriately allows the Departments sufficient time to both (1) consider how the Security Bars rule would interact with the Asylum Processing IFR if the *Pangea II* injunction were lifted and both rules were to be implemented simultaneously, and (2) complete the forthcoming Security Bars NPRM regarding whether to modify or rescind

[35] *See* Public Health Determination and Order Regarding Suspending the Right to Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 87 FR 19941, 19942, 19950–52 (Apr. 6, 2022).

the Security Bars rule as well as complete a final rule following careful consideration of comments received.

Further, even if the Departments had not fulfilled the notice-and-comment requirements of the APA, agencies are not required to engage in pre-promulgation notice and comment under 5 U.S.C. 553(b) and (c) when an agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). Consistent with the March 2021 Delay IFR and the December 2021 Delay IFR, the Departments have determined that the good cause exception applies to this rule because implementation of the Security Bars rule has not been—and continues to not be—feasible due to a preliminary injunction against a related rule. Furthermore, as discussed above, the implementation of the Asylum Processing IFR also impacts the feasibility of the Security Bars rule. The Security Bars rule's reliance upon and interplay with the Global Asylum final rule, as explained above, mean that implementation of the Security Bars rule would risk violating the *Pangea II* injunction. The preliminary injunction remains in place. It is therefore unnecessary for the Departments to provide notice and an opportunity to comment because any comments received cannot and will not affect the injunction underlying the need for delay. *See EME Homer City Generation, L.P.* v. *E.P.A.,* 795 F.3d 118, 134–35 (D.C. Cir. 2015) (explaining that the good cause exception applied because ''commentators could not have said anything during a notice and comment period that would have changed'' the agency's response to a judicial decision).

B. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess the costs, benefits, and transfers of available alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Pursuant to Executive Order 12866, the Office of Information and Regulatory Affairs of the Office of Management and Budget determined that this rule is ''significant'' under Executive Order 12866 and has reviewed this regulation.

C. Regulatory Flexibility Act

The Departments have reviewed this rule in accordance with the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (1980), as amended (codified at 5 U.S.C. 601 *et seq.*), and have determined that this rule to further delay the effective date of the Security Bars rule (85 FR 84160) will not have a significant economic impact on a substantial number of small entities. Neither the Security Bars rule, nor this rule to delay its effective date, regulates ''small entities'' as that term is defined in 5 U.S.C. 601(6). Only individuals, rather than entities, are eligible to apply for asylum and related forms of relief, and only individuals are placed in immigration proceedings.

D. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48; *see also* 2 U.S.C. 1532(a).

E. Congressional Review Act

This rule is not a major rule as defined by section 804 of the legislation commonly known as the Congressional Review Act, *see* Public Law 104–121, sec. 251, 110 Stat. 847, 868 (1996) (codified in relevant part at 5 U.S.C. 804) (''CRA''). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or 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. The Departments have complied with the CRA's reporting requirements and have sent this rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

F. Executive Order 13132 (Federalism)

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

G. Executive Order 12988 (Civil Justice Reform)

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

H. Paperwork Reduction Act

This rule does not create new, or revisions to existing, ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule does not have ''[T]ribal implications'' because it does not 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. Accordingly, Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) requires no further agency action or analysis.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Merrick B. Garland,

Attorney General, U.S. Department of Justice.

[FR Doc. 2022–28121 Filed 12–27–22; 8:45 am]

BILLING CODE 9111–97–P 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1658; Project Identifier MCAI–2022–01597–R; Amendment 39–22293; AD 2022–27–08]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 407 helicopters. This AD was prompted by

an accident. This AD requires inspecting the tailboom attachment structure, as specified in a Transport Canada AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective January 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 12, 2023.

The FAA must receive comments on this AD by February 13, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1658; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Transport Canada material that is incorporated by reference in this final rule, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, CANADA; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* internet *tc.canada.ca/en/aviation.* You may find the Transport Canada material on the Transport Canada website at *tc.canada.ca/en/aviation.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2022–1658.

Other Related Service Information: For Bell service information identified in this final rule, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *bellflight.com/support/contact-support.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–68, dated December 15, 2022 (Transport Canada AD CF–2022–68), following issuance of National Transportation Safety Board (NTSB) Aviation Accident Preliminary Report Number ANC22FA041, to correct an unsafe condition for certain serial-numbered Bell Textron Canada Limited Model 407 helicopters.

This AD was prompted by an accident. The FAA is issuing this AD to address failure of the tailboom attachment hardware. See Transport Canada AD CF–2022–68 for additional background information.

Related Service Information Under 1 CFR Part 51

Transport Canada AD CF–2022–68 requires checking (inspecting) the torque on the tailboom attachment nuts and depending on the results, replacing parts with new parts and stabilizing the torque. Transport Canada AD CF–2022–68 also requires a detailed visual inspection of the existing sealant application of the aft fuselage attachment fittings and depending on the results, removing the sealant, accomplishing a detailed visual inspection of the tailboom attachment structure (fittings, aft frames, aft fuselage bulkhead, aft section of the canted web, tailboom canted bulkhead, and upper and lower tailboom longerons), repair, and reapplying sealant. If the detailed visual inspection of the tailboom attachment structure was not required as a result of the existing sealant application inspection, Transport Canada AD CF–2022–68 also requires accomplishing the detailed visual inspection of the tailboom attachment structure and depending on the results, repair. Transport Canada AD CF–2022–68 prohibits installing a tailboom until inspection of the security of the shims on the forward face of the tailboom bulkhead and elongation of the four bolt holes in the tailboom and fuselage fittings, and any repair, is accomplished. Lastly, Transport Canada AD CF–2022–68 requires reporting information to Bell.

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

Other Related Service Information

The FAA also reviewed Bell Alert Service Bulletin 407–22–128, dated December 8, 2022. This service information specifies procedures for checking (inspecting) the torque of the aft fuselage attachment nuts and depending on the results, replacing parts with new parts, retaining the removed parts for further investigation by Bell, stabilizing the torque, applying corrosion preventive compound, and recording information. This service information also specifies, using a powerful light and mirror, inspecting the existing sealant application of the aft fuselage attachment fittings and depending on the results, removing the sealant, accomplishing a detailed visual inspection of the tailboom attachment structure (fittings, the aft frames, aft fuselage bulkhead, aft section of the canted web, the tailboom canted bulkhead, and upper and lower longerons), repair, reapplying sealant, and recording information. For tailbooms that are not installed on a helicopter, this service information specifies procedures for ensuring that the four shims are securely bonded in position on the forward face of the tailboom bulkhead, examining the four bolt holes in the tailboom and fuselage fittings for elongation, discarding certain removed parts, examining certain other parts, replacing parts, and recording information. Lastly, this service information specifies procedures for reporting the previously recorded information to Bell.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all pertinent information and determining that the unsafe condition exists and is likely to

exist or develop on other helicopters of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in Transport Canada AD CF–2022–68, described previously, as IBRed, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the Transport Canada AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, Transport Canada AD CF–2022–68 is IBRed in this FAA final rule. This AD, therefore, requires compliance with Transport Canada AD CF–2022–68 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in Transport Canada AD CF–2022–68 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Corrective Actions'' in Transport Canada AD CF–2022–68. Service information referenced in Transport Canada AD CF–2022–68 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1658 after this final rule is published.

Differences Between This AD and the Transport Canada AD

Transport Canada AD CF–2022–68 requires torque checks, whereas this AD requires torque inspections because those actions must be accomplished by a mechanic that meets the requirements of 14 CFR part 65 subpart D. Transport Canada AD CF–2022–68 requires retaining removed parts for further investigation by Bell, whereas this AD does not include that requirement. However, operators may choose to retain the parts for further investigation by Bell as this AD does not prohibit an operator from doing so. Transport Canada AD CF–2022–68 does not specify the compliance time to accomplish the repetitive (stabilization) torque checks (inspections) in its AD, whereas this AD does. Transport Canada AD CF–2022–68 requires contacting Bell Product Support Engineering for a repair or instructions to rectify any defect, whereas this AD requires a repair done in accordance with a certain approval. Lastly, Transport Canada AD CF–2022–68 specifies to report inspection results within 30 days, whereas this AD requires reporting inspection results within 10 days instead.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because the tailboom attachment hardware was involved in an accident where the tailboom attachment hardware failed during flight, resulting in the tailboom separating from the helicopter and loss of control of the helicopter. Failure of the tailboom attachment hardware could occur during any phase of flight without any previous indication. As the FAA has no information pertaining to the extent of this condition of the tailboom attachment hardware that may currently exist in helicopters or how quickly the condition may propagate to failure, the compliance time to complete the required inspections is within 25 hours time-in-service or 30 days, whichever occurs first, which is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1658; Project Identifier MCAI–2022–01597–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 839 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Torque inspecting the tailboom attachment hardware, and visually inspecting the sealant and the tailboom attachment structure takes about 2 work-hours for an estimated cost of $170 per helicopter and $142,630 for the U.S. fleet. If required, replacing a bolt and nut set takes about 2 work-hours and parts cost about $170 for an estimated cost of $340 per replacement. Stabilizing the torque takes about 1 work-hour for an estimated cost of $85 per instance. The FAA has no data to determine the costs to accomplish approved repairs. Reporting information takes about 1 work-hour for an estimated cost of $85 per helicopter and $71,315 for the U.S. fleet.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–27–08 Bell Textron Canada Limited: Amendment 39–22293; Docket No. FAA–2022–1658; Project Identifier MCAI–2022–01597–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 12, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 407 helicopters serial numbers 53000 through 53900 inclusive, 53911 through 53999 inclusive, 54000 through 54166 inclusive, 54300 through 54800 inclusive, 54805 through 54954 inclusive, 54956 through 54997 inclusive, 54999, and 56300 through 56304 inclusive, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 5302, Rotorcraft Tail Boom.

(e) Unsafe Condition

This AD was prompted by an accident. The FAA is issuing this AD to address failure of the tailboom attachment hardware. The unsafe condition, if not addressed, could result in separation of the tailboom from the helicopter and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2022–68, dated December 15, 2022 (Transport Canada AD CF–2022–68).

(h) Exceptions to Transport Canada AD CF–2022–68

(1) Where Transport Canada AD CF–2022–68 requires compliance in terms of hours air time, this AD requires using hours time-in-service (TIS).

(2) Where Transport Canada AD CF–2022–68 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph A. of Transport Canada AD CF–2022–68 refers to torque checks, this AD requires torque inspections.

(4) Where the service information referenced in paragraph A. of Transport Canada AD CF–2022–68 specifies to retain removed parts for further investigation, this AD does not include that requirement.

(5) Where paragraph A. of Transport Canada AD CF–2022–68 specifies to ''carry out the repetitive torque check of the tailboom attachment nuts at all four locations in accordance with the applicable ASB until the torque has stabilized;'' for this AD, accomplish that torque inspection after accumulating 1 hour TIS, but not to exceed 5 hours TIS, after replacing each affected bolt and nut set. If the torque on a tailboom attachment nut is not within its allowable torque limit, before further flight, re-torque the nut to its allowable torque limit. Thereafter, repeat the torque inspection of each tailboom attachment nut after accumulating 1 hour TIS, but not to exceed

5 hours TIS, until the torque for all four tailboom attachment points has stabilized.

(6) Where paragraph C. of Transport Canada AD CF–2022–68 refers to ''defect,'' this AD defines that as a crack, dent, loose fastener, unsecure attachment, deformation, or corrosion.

(7) Where paragraph C. of Transport Canada AD CF–2022–68 specifies to contact Bell Product Support Engineering for a repair or instructions to rectify any defect, this AD requires repair done in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or Transport Canada; or Bell Textron Canada Ltd.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(8) Where the service information referenced in paragraph C. of Transport Canada AD CF–2022–68 specifies to discard parts, this AD requires removing those parts from service.

(9) Where paragraph D. of Transport Canada AD CF–2022–68 specifies to report inspection results to Bell Product Support Engineering within 30 days after accomplishing the inspections required by paragraphs A. or C., this AD requires reporting inspection results at the applicable time in paragraph (h)(9)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after accomplishing the actions required by paragraph A. or C. of Transport Canada AD CF–2022–68.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided no passengers are onboard.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2022–68, dated December 15, 2022.

(ii) [Reserved]

(3) For Transport Canada AD CF–2022–68, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, CANADA; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* internet *tc.canada.ca/en/aviation.* You may find the Transport Canada material on the Transport Canada website at *tc.canada.ca/en/aviation.*

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

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

Issued on December 21, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–28315 Filed 12–23–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1649; Project Identifier MCAI–2022–01206–E; Amendment 39–22284; AD 2022–26–05]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG (RRD) TAY 620–15 and TAY 650–15 model turbofan engines. This AD was prompted by reports of cracks on the high-pressure turbine (HPT) stage 2 intermediate air seal attachment bolts (attachment bolts). This AD requires repetitive inspections of the HPT stage 2 intermediate air seal and attachment bolts and, depending on the results of the inspections, replacement of attachment bolts and the HPT stage 1 and stage 2 rotor disks, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 12, 2023.

The FAA must receive comments on this AD by February 13, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1649; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material incorporated by reference in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer,

ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1649; Project Identifier MCAI–2022–01206–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0184, dated September 2, 2022 (EASA AD 2022–0184) (referred to after this as ''the MCAI''), to correct an unsafe condition for all RRD TAY 620–15 and TAY 650–15 model turbofan engines. The MCAI states that cracks on attachment bolts have been reported which, if not detected and corrected, could result in failure of HPT stage 1 and stage 2 rotor disks, high energy debris release, damage to the airplane, and reduced control of the airplane.

The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket under Docket No. FAA–2022–1649.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0184, dated September 2, 2022, which specifies procedures for repetitive inspections of the HPT stage 2 intermediate air seal and attachment bolts and, depending on the findings, replacement of all damaged parts.

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

FAA's Determination

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

AD Requirements

This AD requires accomplishing the actions specified in EASA AD 2022–0184, described previously, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the MCAI.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, EASA AD 2022–0184 will be incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2022–0184 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0184. Service information required by the EASA AD for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1649.

Differences Between This AD and the MCAI

Where EASA AD 2022–0184 requires replacement of all damaged parts, this AD requires replacement of attachment bolts and the HPT stage 1 and stage 2 rotor disks.

Justification for Immediate Adoption and Determination of the Effective Date

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

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days for the same reasons the FAA found good cause to forego notice and comment.

Regulatory Flexibility Act

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

Costs of Compliance

Currently, there are no U.S. registered airplanes with the affected engines installed. If an affected engine is installed on an airplane, or if an airplane with an affected engine is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive inspection of the HPT stage 2 intermediate air seal and attachment bolts.	3 work-hours × $85 per hour = $255	$0	$255	$0

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace attachment bolts and HPT stage 1 and stage 2 rotor disks.	6 work-hours × $85 per hour = $510	$280,189	$280,699

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–26–05 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Amendment 39–22284; Docket No. FAA–2022–1649; Project Identifier MCAI–2022–01206–E.

(a) Effective Date

This airworthiness directive (AD) is effective January 12, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG TAY 620–15 and TAY 650–15 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7240, Turbine Engine Combustion Section.

(e) Unsafe Condition

This AD was prompted by reports of cracks on high-pressure turbine (HPT) stage 2 intermediate air seal attachment bolts (attachment bolts). The FAA is issuing this AD to prevent failure of the HPT stage 1 and stage 2 rotor disks. The unsafe condition, if not addressed, could result in high energy debris release, damage to the airplane, and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0184, dated September 2, 2022 (EASA AD 2022–0184).

(h) Exceptions to EASA AD 2022–0184

(1) Where EASA AD 2022–0184 requires compliance from its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0184 requires replacement of all damaged parts, this AD requires replacing cracked attachment bolts and HPT stage 1 and stage 2 rotor disks that show evidence of wear from broken attachment bolts.

(3) Where the service information referenced in EASA AD 2022–0184 specifies to replace the engine and send the removed engine to an approved TAY overhaul facility if indications of damage are found, this AD requires replacing cracked attachment bolts and HPT stage 1 and stage 2 rotor disks that show evidence of wear from broken attachment bolts.

(4) This AD does not adopt the ''Remarks'' paragraph of EASA AD 2022–0184.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0184 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0184, dated September 2, 2022.

(ii) [Reserved]

(3) For more information about EASA AD 2022–0184, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on December 14, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–28221 Filed 12–27–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2022–N–3185]

Medical Devices; Cardiovascular Devices; Classification of the Interventional Cardiovascular Implant Simulation Software Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency or we) is classifying the interventional cardiovascular implant simulation software device into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the interventional cardiovascular implant simulation software device's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective December 28, 2022. The classification was applicable on September 8, 2021.

FOR FURTHER INFORMATION CONTACT: Judy Ji, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2543, Silver Spring, MD, 20993–0002, 301–796–6949, *Judy.Ji@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the interventional cardiovascular implant simulation software device as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for

future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On May 7, 2020, FDA received FEops NV's request for De Novo classification of the FEops HEARTguide. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on September 8, 2021, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 870.1405.[1] We have named the generic type of device interventional cardiovascular implant simulation software device, and it is identified as a prescription device that provides a computer simulation of an interventional cardiovascular implant device inside a patient's cardiovascular anatomy. It performs computational modeling to predict the interaction of the interventional cardiovascular implant device with the patient-specific anatomical environment.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—INTERVENTIONAL CARDIOVASCULAR IMPLANT SIMULATION SOFTWARE DEVICE RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Inaccurate simulation results leading to selection of suboptimal treatment plan, leading to prolonged procedure time and/or patient injury.	Software verification, validation, and hazard analysis; Computational modeling verification and validation; Performance validation with clinical data; Labeling; and Human factors testing.
Delayed delivery of results due to software failure or use error, leading to delay of treatment.	Software verification, validation, and hazard analysis; Human factors testing; and Labeling.
Failure to properly interpret device results leading to selection of suboptimal treatment plan, leading to prolonged procedure time and/or patient injury.	Human factors testing, and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, interventional cardiovascular implant simulation software device is for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for part 870 continues to read as follows:

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 870.1405 to subpart B to read as follows:

§ 870.1405 Interventional cardiovascular implant simulation software device.

(a) *Identification.* An interventional cardiovascular implant simulation software device is a prescription device that provides a computer simulation of an interventional cardiovascular implant device inside a patient's cardiovascular anatomy. It performs computational modeling to predict the interaction of the interventional cardiovascular implant device with the patient-specific anatomical environment.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Software verification, validation, and hazard analysis, with identification of appropriate mitigations, must be performed, including a full verification and validation of the software according to the predefined software specifications.

(2) Computational modeling verification and validation activities must be performed to establish the predictive capability of the device for its indications for use.

(3) Performance validation testing must be provided to demonstrate the accuracy and clinical relevance of the modeling methods for the intended implantation simulations, including the following:

(i) Computational modeling results must be compared to clinical data supporting the indications for use to demonstrate accuracy and clinical meaningfulness of the simulations;

(ii) Agreement between computational modeling results and clinical data must be assessed and demonstrated across the full intended operating range (*e.g.,* full range of patient population, implant device sizes and patient anatomic morphologies). Any selection criteria or limitations of the samples must be described and justified;

(iii) Endpoints (*e.g.,* performance goals) and sample sizes established must be justified as to how they were determined and why they are clinically meaningful; and

(iv) Validation must be performed and controls implemented to characterize and ensure consistency (*i.e.,* repeatability and reproducibility) of modeling outputs:

(A) Testing must be performed using multiple qualified operators and using the procedure that will be implemented under anticipated conditions of use; and

(B) The factors (*e.g.,* medical imaging dataset, operator) must be identified regarding which were held constant and which were varied during the evaluation, and a description must be provided for the computations and statistical analyses used to evaluate the data.

(4) Human factors evaluation must be performed to evaluate the ability of the user interface and labeling to allow for intended users to correctly use the device and interpret the provided information.

(5) Device labeling must be provided that describes the following:

(i) Warnings that identify anatomy and image acquisition factors that may impact simulation results and provide cautionary guidance for interpretation of the provided simulation results;

(ii) Device simulation inputs and outputs, and key assumptions made in the simulation and determination of simulated outputs; and

(iii) The computational modeling performance of the device for presented simulation outputs, and the supporting evidence for this performance.

Dated: December 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–28173 Filed 12–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 8D and 40C

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General Licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing two general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 8D and 40C, which were previously made available on OFAC's website.

DATES: GL 8D was issued on November 10, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On November 10, 2022, OFAC issued GL 8D to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR). On November 14, 2022, OFAC issued GL 40C to authorize certain transactions otherwise prohibited by the RuHSR. At the time of issuance, OFAC made GLs 8D and 40C available on its website (*www.treas.gov/ofac*). The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations; 31 CFR Part 587

GENERAL LICENSE NO. 8D

Authorizing Transactions Related to Energy

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 involving one or more of the following entities that are related to energy are authorized, through 12:01 a.m. eastern daylight time, May 15, 2023.

(1) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(2) Public Joint Stock Company Bank Financial Corporation Otkritie;

(3) Sovcombank Open Joint Stock Company;

(4) Public Joint Stock Company Sberbank of Russia;

(5) VTB Bank Public Joint Stock Company;

(6) Joint Stock Company Alfa-Bank;

(7) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest; or

(8) the Central Bank of the Russian Federation.

(b) For the purposes of this general license, the term ''related to energy'' means the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 1A under E.O. 14024, *Prohibitions Related to Certain Sovereign Debt of the Russian Federation;*

(2) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(3) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation; or

(4) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(d) Effective November 10, 2022, General License No. 8C, dated June 14, 2022, is replaced and superseded in its entirety by this General License No. 8D.

Note to General License No. 8D. This authorization is valid until May 15, 2023 unless renewed.

Bradley T. Smith
Deputy Director, Office of Foreign Assets Control.

Dated: November 10, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations; 31 CFR Part 587

GENERAL LICENSE NO. 40C

Civil Aviation Safety

(a) Except as provided in paragraph (b), all transactions ordinarily incident and necessary to the provision, exportation, or reexportation of goods, technology, or services to ensure the safety of civil aviation involving one or more of the blocked entities listed in the Annex to this general license and that are prohibited by Executive Order (E.O.) 14024 are authorized, provided that:

(1) The aircraft is registered in a jurisdiction solely outside of the Russian Federation; and

(2) The goods, technology, or services that are provided, exported, or reexported are for use on aircraft operated solely for civil aviation purposes.

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any transactions prohibited by 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;* or

(3) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked entities listed in the Annex to this general license, unless separately authorized.

(c) Effective November 14, 2022, General License No. 40B, dated August 3, 2022, is replaced and superseded in its entirety by this General License No. 40C.

Note to General License 40C. Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies, including export, reexport, and transfer (in-country) licensing requirements maintained by the Department of Commerce's Bureau of Industry and Security under the Export Administration Regulations, 15 CFR parts 730–774.

Andrea M. Gacki
Director, Office of Foreign Assets Control.

Dated: November 14, 2022.

Annex—Blocked Entities Described in Paragraph (a) of General License 40C

List of blocked entities described in paragraph (a) of General License 40C:

(a) Public Joint Stock Company United Aircraft Corporation;

(b) Irkut Corporation Joint Stock Company;

(c) Energotsentr Irkut;

(d) Irkut-Avtotrans;

(e) Irkut-Remstroi;

(f) Irkut-Stanko Service;

(g) Rapart Servisez;

(h) Sportivno-Ozdorovitelnyi Tsentr Irkut-Zenit;

(i) Tipografiya Irkut;

(j) Joint Stock Company Ilyushin Finance Company;

(k) Open Joint Stock Company Ilyushin Aviation Complex;

(l) Public Joint Stock Company Taganrog Aviation Scientific-Technical Complex N.A. G.M. Beriev;

(m) Joint Stock Company Flight Research Institute N.A. M.M. Gromov;

(n) Tupolev Public Joint Stock Company;

(o) Limited Liability Company Kapo-Avtotrans;

(p) Limited Liability Company Kapo-Zhilbitservis;

(q) Limited Liability Company Networking Company Irkut;

(r) Joint Stock Company State Transportation Leasing Company;

(s) Emperor Aviation LTD; or

(t) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–28240 Filed 12–27–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0607]

RIN 1625–AA00

Safety Zone; Chinese Harbor, Santa Cruz Island, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary safety zone for the navigable waters in Chinese Harbor of Santa Cruz Island, California. This temporary safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by ongoing oil recovery operations relating to the grounding of a 60-foot fishing vessel in Chinese Harbor. Entry of persons or vessels into this safety zone is prohibited unless specifically authorized by the Captain of the Port Sector Los Angeles—Long Beach (COTP), or his designated representative.

DATES: This rule is effective without actual notice from December 28, 2022 until January 4, 2023. For the purposes of enforcement, actual notice will be used from December 21, 2022 until December 28, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2022–0607 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Maria Wiener, Waterways Management, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 357–1603, email *D11-SMB-SectorLALB-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and

opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This is an emergency response to a vessel grounding and immediate action is needed to respond to potential safety hazards associated with the emergency oil recovery operations. It is impracticable to publish an NPRM because we must establish this safety zone by December 21, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to ensure the safety of persons, vessels, and the marine environment in the vicinity of Chinese Harbor during emergency oil recovery operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231) and 46 U.S.C. 70011(b)(3). The Captain of the Port Sector Los Angeles—Long Beach (COTP) has determined that potential hazards associated with emergency oil recovery operations will be a safety concern for anyone within a 4,000-yard radius of the grounded fishing vessel in Chinese Harbor. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while oil recovery operations take place in the vicinity of Chinese Harbor.

IV. Discussion of the Rule

This rule establishes a safety zone from December 21, 2022 until January 4, 2023. The safety zone will cover all navigable waters from the surface to the sea floor in and around Chinese Harbor from the location of the commercial fishing vessel SPERANZA MARIE (Official Number 643138), currently on the shoreline at 34°01.59′ N, 119°36.32′ W and extending out along a 4,000-yard radius from the vessel. These coordinates are based on North American Datum of 1983. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or his designated representative. Sector Los Angeles—Long Beach may be contacted on VHF–FM Channel 16 or (310) 521–3801. The marine public will be notified of the safety zone via Broadcast Notice to Mariners.

A *Designated representative* means a Coast Guard a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the Captain of the Port Sector Los Angeles-Long Beach (COTP) in the enforcement of the safety zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited size of the zone, which encompasses a two nautical mile radius at Chinese Harbor and two week duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small, designated area of Chinese Harbor, Santa Cruz Island, CA. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 regarding the safety zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing an area extending 4,000 yards out from a grounded vessel in vicinity of Chinese Harbor and will last only while oil recovery operations are ongoing. It is categorically excluded from further review under paragraph L60, in Appendix A, Table 1 of DHS Instruction Manual 023–001–01, Rev. 1. A Record of Environmental Consideration (REC) is not require for emergency operations, but will be created if necessary.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165. T11–119 to read as follows:

§ 165. T11–119 Safety Zone; Chinese Harbor, Santa Cruz Island, California.

(a) *Location.* The following area is a safety zone: All navigable waters from the surface to the sea floor in and around Chinese Harbor from the vessel SPERANZA MARIE, currently on the shoreline at 34°01.59′ N, 119°36.32′ W, and extending out along a 4,000-yard radius from the vessel. These coordinates are based on North American Datum of 1983.

(b) *Definitions.* As used in this section, *Designated representative* means a Coast Guard a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the Captain of the Port Sector Los Angeles-Long Beach (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

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

(d) *Enforcement period.* This section will be enforced from December 21, 2022 through January 4, 2023. The marine public will be notified of this safety zone via Broadcast Notice to Mariners. If the Captain of the Port determines that the zone need not be enforced during this entire period, the Coast Guard will announce via Broadcast Notice to Mariners when the zone will no longer be subject to enforcement.

Dated: December 21, 2022.

R.D. Manning,

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

[FR Doc. 2022–28163 Filed 12–27–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0846; FRL–9304–02–R9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve

revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) from flares. We are approving these local rules to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules are effective on January 27, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0846. 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. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4129 or by email at *sherman.donnique@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Environmental Justice
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Proposed Action

On January 25, 2022 (87 FR 3736), the EPA proposed to approve the following rules into the California SIP.

Local agency	Rule #	Rule title	Adopted/ amended	Submitted
SCAQMD	1118.1	Control of Emissions from Non-Refinery Flares	01/04/2019	04/24/2019
SJVUAPCD	4311	Flares	12/17/2020	03/12/2021

SCAQMD Rule 1118.1 is designed to decrease VOC, sulfur dioxide, and nitrogen oxides emissions from non-refinery flares. SJVUAPCD Rule 4311 is designed to decrease NO_X and VOC flare emissions from refineries, unrecoverable gases from oil wells, vented gases from blast furnaces, unused gases from coke ovens, and gaseous wastes from chemical industries. We proposed to approve these rules because we determined that they comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During the comment period we received one comment in support of EPA's January 25, 2022 proposed action. We acknowledge the comment, and we are approving the rules into the SIP.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the California SIP. The December 17, 2020 version of SJVUAPCD Rule 4311 will replace the previously approved version (76 FR 68106) of this rule in the SIP. The January 4, 2019 version of SCAQMD Rule 1118.1 is a new rule in the SIP.

IV. Environmental Justice Analysis

SJVUAPCD evaluated the socioeconomic impact analysis of the amendments to Rule 4311.[1] The District selected Eastern Research Group, Inc (ERG) to complete the analysis, in which they used CalEnviroScreen 3.0 [2] to overlay the data on the impacts of the rule with data on poverty. They concluded that there was ''no statistical correlation between the affected facilities and poverty, but many of the potentially affected facilities are located in the census tracts with high percentages of the population living in poverty.'' [3] SJVUAPCD Rule 4311 is expected to have a positive effect on the quality of air around the impacted facilities and reduce emissions. The EPA reviewed the District's socioeconomic analysis and did not identify any information in the record that impacts our proposed approval. SCAQMD did not submit a socioeconomic analysis with their April 24, 2019 Rule 1118.1 submission.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SJVUAPCD and SCAQMD rules identified in section I. of this preamble. These rules concern emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NOx) from flares. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

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, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

[1] SJVUAPCD, Final Staff Report, ''Potential Amendments to Rule 4311—Flares,'' December 9, 2020.

[2] California Office of Environmental Health Hazard Assessment (OEHHA). (2018). CalEnviroScreen 3.0 (updated June 2018). Available at *https://oehha.ca.gov/calenviroscreen/maps-data* (Accessed September 3, 2020)

[3] SJVUAPCD, Final Staff Report, ''Potential Amendments to Rule 4311—Flares,'' December 9, 2020.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental 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 does not impose additional requirements beyond those imposed by state law.

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

This action 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 (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

As described above in section IV, the state evaluated environmental justice considerations as part of its SIP submittal for Rule 4311. The EPA considered the state's evaluation as part of EPA's review. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Thus, there is no information in the record inconsistent with the stated goals of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

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 February 27, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 19, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends Part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(378)(i)(D)(*2*), (c)(564)(i)(A)(*2*) and (c)(587) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(378) * * *

(i) * * *

(D) * * *

(*2*) Previously approved on November 11, 2011 in paragraph (c)(378)(i)(D)(*1*) of this section and now deleted with replacement in (c)(587)(i)(A)(*1*), Rule 4311 ''Flares,'' amended June 18, 2009.

* * * * *

(564) * * *

(i) * * *

(A) * * *

(*2*) Rule 1118.1, ''Control of Emissions from Non-Refinery Flares,'' adopted on January 4, 2019.

(*3*) [Reserved]

* * * * *

(587) Amended regulations for the following APCDs were submitted on March 12, 2021 by the Governor's designee as an attachment to a letter dated March 10, 2021.

(i) *Incorporation by reference.* —(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4311, ''Flares,'' amended on December 17, 2020.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

[FR Doc. 2022–27996 Filed 12–27–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 221219–0278]

RIN 0648–BK00

Endangered and Threatened Species: Designation of a Nonessential Experimental Population of Central Valley Spring-Run Chinook Salmon in the Upper Yuba River Upstream of Englebright Dam, Authorization for Release, and Adoption of Limited Protective Regulations Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; notification of availability of a final environmental assessment.

SUMMARY: We, NMFS, designate and authorize the release of a nonessential experimental population (NEP or experimental population) of Central Valley (CV) spring-run Chinook salmon (*Oncorhynchus tshawytscha*) in the upper Yuba River and its tributaries upstream of Englebright Dam, California, and under the Endangered Species Act (ESA), establish a limited set of take exceptions for the experimental population. Successful reintroduction of a population within the species' historical range would contribute to its viability and further its conservation. The issuance of limited protective regulations for the conservation of the species would provide assurances to the people of the upper Yuba River watershed. This document also announces the availability of a final environmental assessment (EA) that analyzed the environmental impacts of promulgating the experimental population rule and associated take exceptions.

DATES: The final rule is effective January 27, 2023.

ADDRESSES: The Final EA and other reference materials regarding this final rule can be obtained at NMFS's National Environmental Policy Act (NEPA) website at: *https://www.westcoast.fisheries.noaa.gov/publications/nepa/nepa_documents.html.* or by submitting a request to the Assistant Regional Administrator, California Central Valley Office, West Coast Region, NMFS, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Steve Edmonson, NMFS, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814, 916–930–3600, or Adrienne Lohe, NMFS Office of Protected Resources, 301–427–8442.

SUPPLEMENTARY INFORMATION:

Background Information Relevant to Experimental Population Designation

On December 11, 2020, NMFS published a proposed rule in the **Federal Register** (85 FR 79980) for the designation of a NEP and authorization for release under ESA section 10(j) and the adoption of limited protective regulations under ESA section 4(d). The proposed rule also announced the availability of a final EA for the proposed rule.

NMFS listed the CV spring-run Chinook salmon Evolutionarily Significant Unit (ESU) [1] as threatened under the ESA, 16 U.S.C. 1531 *et seq.,* on September 16, 1999 (64 FR 50394), and reaffirmed this status in a final rule on June 28, 2005 (70 FR 37160), and 5-year reviews announced on August 15, 2011 (76 FR 50447), and May 26, 2016 (81 FR 33468). The listed ESU of CV spring-run Chinook salmon currently includes all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries, as well as the Feather River Hatchery (FRH) spring-run Chinook salmon program. On January 9, 2002 (67 FR 1116), NMFS issued protective regulations under section 4(d) of the ESA for CV spring-run Chinook salmon that apply the take prohibitions of section 9(a)(1) of the ESA except for listed exceptions (see 50 CFR 223.203). Critical habitat has been designated for CV spring-run Chinook salmon (70 FR 52488, September 2, 2005), and includes most of the occupied riverine habitat within their extant range. CV spring-run Chinook salmon are also listed as a threatened species by the State of California under the California Endangered Species Act (CESA), California Fish and Game Code, Division 3, Chapter 1.5.

In 2014, we adopted a final recovery plan for the CV spring-run Chinook salmon ESU (79 FR 42504, July 22, 2014). The Central Valley recovery plan identifies re-establishing populations of CV spring-run Chinook salmon above impassable barriers to unoccupied historical habitats as an important recovery action (NMFS 2014). More specifically, the Central Valley recovery plan explains that re-establishing populations above impassable barriers, such as Englebright Dam on the Yuba River (Yuba and Nevada Counties, California), would aid in recovery of the ESU by increasing abundance, spatial structure and diversity and by reducing the risk of extinction to the ESU as a whole.

NMFS is issuing a rule to (a) designate and authorize the release of an experimental population of CV spring-run Chinook salmon pursuant to ESA section 10(j) in the upper Yuba River watershed upstream of Englebright Dam, and (b) establish take prohibitions for the experimental population and exceptions for particular activities.

Supplemental Information

This is a final rule stemming from a proposed rule that was published December 11, 2020 (85 FR 79980). The nonessential experimental population (NEP) Area includes the entire upper Yuba River watershed, which extends from the crest of the Sierra-Nevada Mountains down to Englebright Dam. It is located north of the cities of Grass Valley and Nevada City, and east of the cities of Marysville and Yuba City, California. The NEP Area is part of the species' historical range. The upper Yuba River experimental population is all CV spring-run Chinook salmon, including fish released or propagated, naturally or artificially, within the NEP Area.

Statutory and Regulatory Framework for Experimental Population Designation

Section 10(j) of the ESA (16 U.S.C. 1539(j)) allows the Secretary of Commerce to authorize the release of any population of a listed species outside their current range if the release ''furthers their conservation.'' An experimental population is a population that is geographically separate from nonexperimental populations of the same species.

Before authorizing the release of an experimental population, section 10(j)(2)(B) requires that the Secretary must ''by regulation identify the population and determine, on the basis of the best available information, whether or not the population is essential to the continued existence of the listed species.

An experimental population is treated as a threatened species, except that non-essential populations do not receive the benefit of certain protections normally applicable to threatened species (ESA section 10(j)(2)(C)). Below we discuss the impact of treating experimental populations as threatened species and of exceptions that apply to experimental populations.

For endangered species, section 9 of the ESA prohibits take of those species. For a threatened species, ESA section 9 does not specifically prohibit take of those species, but the ESA instead authorizes NMFS to adopt regulations under section 4(d) that it deems necessary and advisable for species conservation, including prohibiting take. The experimental population of CV spring-run Chinook salmon must generally be treated as a threatened species. Therefore, we issue tailored protective regulations under ESA section 4(d) for the experimental population of CV spring-run Chinook salmon to identify take prohibitions necessary and advisable to provide for the conservation of the species with exceptions for particular activities.

Section 7 of the ESA provides for Federal interagency cooperation and consultation on Federal agency actions. Section 7(a)(1) directs all Federal agencies, in consultation with NMFS as applicable depending on the species, to use their authorities to further the purposes of the ESA by carrying out programs for the conservation of listed species. Section 7(a)(2) requires all Federal agencies, in consultation with NMFS as applicable depending on the species, to ensure any action they authorize, fund or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 applies equally to endangered and threatened species.

Although ESA section 10(j) provides that an experimental population must generally be treated as a threatened species, for the purposes of ESA section 7, if the experimental population is determined to be a NEP, section

[1] The ESA defines ''species'' to include ''any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532(16); see also 50 CFR 424.02). For Pacific salmon, NMFS determined that an ESU will be considered a distinct population segment and thus a species (56 FR 58612, November 20, 1991). A group of Pacific salmon is considered an ESU if it is substantially reproductively isolated from other nonspecific population units, and represents an important component in the evolutionary legacy of the species.

10(j)(C)(i) requires that we treat the experimental population as a species proposed to be listed, rather than a species that is listed (except when it occurs within a National Wildlife Refuge or National Park, in which case it is treated as listed). Section 7(a)(4) of the ESA requires Federal agencies to confer (rather than consult under ESA section 7(a)(2)) with NMFS on actions likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are advisory recommendations, if any, on ways to minimize or avoid adverse effects rather than mandatory terms and conditions under ESA section 7(a)(2) consultations (compare 50 CFR 402.10(c) with 50 CFR 402.14(i)(1)(iv)).

NMFS has designated three experimental populations (78 FR 2893, January 15, 2013; 78 FR 79622, December 31, 2013; 79 FR 40004, July 11, 2014) and promulgated regulations, codified at 50 CFR part 222, subpart E, to implement section 10(j) of the ESA (81 FR 33416, May 26, 2016). NMFS' implementing regulations include the following provisions:

The provision at 50 CFR 222.501(b) defines an ''essential experimental population'' as an experimental population that if lost, the survival of the species in the wild would likely be substantially reduced. All other experimental populations are classified as nonessential.

The provision at 50 CFR 222.502(b) provides, before authorizing the release of an experimental population, the Secretary must find by regulation that such release will further the conservation of the species. In addition, 50 CFR 222.502(b) provides that in making such a finding, the Secretary shall utilize the best scientific and commercial data available to consider:

- Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere;
- The likelihood that any such experimental population will become established and survive in the foreseeable future;
- The effects that establishment of an experimental population will have on the recovery of the species; and
- The extent to which the introduced population may be affected by existing or anticipated Federal or state actions or private activities within or adjacent to the experimental population area.

The provision 50 CFR 222.502(c) describes 4 components that must be provided in any NMFS regulations designating an experimental population under ESA section 10(j):

- Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location; actual or anticipated migration; number of specimens released or to be released; and other criteria appropriate to identify the experimental population(s);
- A finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild;
- Management restrictions, protective measures, or other special management concerns of that population, as appropriate, which may include, but are not limited to, measures to isolate and/or to contain the experimental population designated in the regulation from nonexperimental populations and protective regulations established pursuant to section 4(d) of the ESA; and
- A process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

In addition, as described above, ESA section 10(j)(1) defines an ''experimental population'' as any population authorized for release but only when, and at such times as, the population is wholly separate geographically from the non-experimental populations of the same species. Accordingly, we must establish that there are such times and places when the experimental population is wholly geographically separate. Similarly, the statute requires that we identify the experimental population; the legislative history indicates that the purpose of this requirement is to provide notice as to which populations of listed species are experimental (see Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep No. 97–835, at 34 (1982)).

We discuss in more detail below how we considered each of these elements.

Status of the Species

Life history and the historical population trend of CV spring-run Chinook salmon are summarized by Healy (1991), United States Fish and Wildlife Service (USFWS) (1995), Yoshiyama *et al.* (1998), Yoshiyama *et al.* (2001), and Moyle (2002). Section 4(f) of the ESA requires the Secretary of Commerce to develop recovery plans for all listed species unless the Secretary determines that such a plan will not promote the conservation of a listed species. Prior to developing the Central Valley recovery plan (NMFS 2014), we assembled a team of scientists from Federal and state agencies, consulting firms, non-profit organizations and academia. This group, known as the Central Valley Technical Recovery Team (CVTRT), was tasked with identifying population structure and recommending recovery criteria (also known as delisting criteria) for ESA-listed salmon and steelhead (*O. mykiss*) in the Sacramento River and San Joaquin Rivers and their tributaries. The CVTRT recommended biological viability criteria at the ESU level and population level (Lindley *et al.,* 2007) for recovery planning consideration. The CVTRT identified the current risk level of each population based on the gap between recent abundance and productivity and the desired recovery goals. The CVTRT concluded that the greatest risk facing the ESUs resulted from the loss of historical diversity following the construction of major dams that blocked access to historical spawning and rearing habitat (Lindley *et al.,* 2007).

The CVTRT also recommended spatial structure and diversity metrics for each population (Lindley *et al.,* 2004). Spatial structure refers to the geographic distribution of a population and the processes that affect the distribution. Populations with restricted distribution and few spawning areas are at a higher risk of extinction from catastrophic environmental events (*e.g.,* wildfire, volcanic eruption, et cetera) than are populations with more widespread and complex spatial structure. A population with complex spatial structure typically has multiple spawning areas, which allows the expression of diverse life history characteristics. Diversity is the combination of genetic and phenotypic characteristics within and between populations (McElhany *et al.,* 2000). Phenotypic diversity allows more diverse populations to use a wider array of environments and protects populations against short-term temporal and spatial environmental changes. Genotypic diversity, on the other hand, provides populations with the ability to survive long-term changes in the environment by providing genetic variations that may prove successful under different situations. The combination of phenotypic and genotypic diversity, expressed in a natural setting, provides populations with the ability to utilize the full range of habitat and environmental conditions and to have the resiliency to survive and adapt to long-term changes in the environment.

In 2016, NMFS completed a periodic review as required by the ESA section

4(c)(2)(A), and concluded that the CV spring-run Chinook salmon ESU should remain listed as threatened (81 FR 33468, May 26, 2016). An analysis conducted by NMFS' Southwest Fisheries Science Center (Johnson and Lindley, 2016) indicated that the extant independent populations of the CV spring-run Chinook salmon ESU remained at a moderate to low extinction risk since the last status review (Williams *et al.,* 2011). The analysis noted some improvements in the viability of the ESU, particularly with respect to the increased spatial diversity of the dependent Battle Creek and Clear Creek populations. The analysis identified as key threats the recent catastrophic declines of many of the extant populations, high pre-spawn mortality during the 2012–2015 drought in California, uncertain juvenile survival due to drought and ocean conditions, as well as straying of CV spring-run Chinook salmon from the Feather River Hatchery (FRH) (Johnson and Lindley, 2016).

Analysis of the Statutory Requirements

1. Will authorizing release of an experimental population further the conservation of the species?

Section 3(3) of the ESA, 16 U.S.C. 1532(3), defines ''conservation'' as the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. We discuss in more detail below each of the factors considered in determining if authorizing release of an experimental population in the NEP Area would further the conservation of CV spring-run Chinook salmon.

Under 50 CFR 222.502(b), NMFS must consider several factors in finding whether authorizing release of an experimental population will further the conservation of the species, including any possible adverse effects on extant populations of the species as a result of removal of individuals for introduction elsewhere; the likelihood that the experimental population will become established and survive in the foreseeable future; the effects that establishment of the experimental population will have on the recovery of the species; and the extent to which the experimental populations may be affected by existing or anticipated Federal or state actions or private activities within or adjacent to the experimental population area.

Regarding the likelihood that reintroduction efforts will be successful in the foreseeable future, an important question is: what are the most appropriate sources of broodstock to establish the experimental population, and are the sources available? Reintroduction efforts have the best chance for success when the donor population has life-history characteristics compatible with the anticipated environmental conditions of the habitat into which fish will be reintroduced (Araki *et al.,* 2008). Populations found in watersheds closest to the NEP Area are most likely to have adaptive traits that will lead to a successful reintroduction. Therefore, only CV spring-run Chinook salmon populations found in the Central Valley will be used in establishing the experimental populations in the NEP Area.

We have preliminarily identified a donor source for reintroduction into the upper Yuba River as CV spring-run Chinook salmon produced from the FRH. The Yuba River is a tributary to the Feather River and CV spring-run Chinook salmon from the FRH are the geographically closest donor source that could be used with minimal impact to the wild population for reintroduction into the upper Yuba River. The donor stock raised at the FRH may include CV spring-run Chinook salmon from either the Feather or Yuba River. NMFS, in consultation with the California Department of Fish and Wildlife (CDFW), may later consider diversifying the donor stock with CV spring-run Chinook salmon from other nearby streams if those populations can sustain removal of fish without adverse population level effects.

Use of donor stock from the FRH for the initial phases of a reintroduction program will minimize the number of individuals needed from existing wild populations. Donor stock supplementation, if necessary, would be dependent upon genetic diversity needs and the extent of adverse effects to other populations. Although donor stocks have not been determined, fish produced from the FRH are expected to be the initial source of individuals to establish an experimental population of CV spring-run Chinook salmon in the NEP Area. Any collection of CV spring-run Chinook salmon would be subject to NMFS's approval of a permit under ESA section 10(a)(1)(A), which potentially includes a Hatchery Genetic Management Plan (HGMP) in relation to a hatchery stock and will include additional analysis under NEPA and ESA section 7. Once a self-sustaining population is established, it is anticipated that the FRH contribution (and contributions from other locations) of CV spring-run Chinook salmon would be phased out.

We also consider the suitability of habitat available to the experimental population. NMFS initiated a habitat assessment of the upper Yuba River and determined conditions were suitable for Chinook salmon spawning, adult holding, and juvenile rearing (Stillwater Sciences 2013). The relative abundance of habitat types, habitat quality and environmental conditions vary between the North, Middle, and South Yuba Rivers. Under current conditions when compared to one another, habitat conditions are most suitable in the North Yuba River. The Middle Yuba River maintains significant quantities of suitable habitat and habitat conditions are currently less suitable in the South Yuba River. Habitat conditions in the Middle and South Yuba Rivers will likely improve with additional instream flow releases from dams in the upper watersheds as part of the Federal Energy Regulatory Commission's (FERC) relicensing process pursuant to the Federal Power Act (FPA).

In addition, there are Federal and state laws and regulations that will help ensure the establishment and survival of the experimental population by protecting aquatic and riparian habitat in the NEP Area. Section 404 of the Clean Water Act (CWA), 33 U.S.C. 1344, establishes a program to regulate the discharge of dredged or fill material into waters of the United States, which generally requires avoidance, minimization, and mitigation for potential adverse effects of dredge and fill activities within the nation's waterways. Under CWA section 401, 33 U.S.C. 1341, a Federal agency may not issue a permit or license to conduct any activity that may result in discharge into waters of the United States unless a state or authorized tribe, where the discharge would originate, issues a section 401 water quality certification verifying compliance with existing water quality requirements or waives the certification requirement. In addition, construction and operational storm water runoff is subject to restrictions under CWA section 402, 33 U.S.C. 1342, which establishes the National Pollutant Discharge Elimination System permit program, and state water quality laws.

FERC, pursuant to the FPA and the U.S. Department of Energy Organization Act, is authorized to issue licenses for up to 50 years for the construction and operation of non-Federal hydroelectric developments subject to its jurisdiction. The FPA authorizes NMFS to issue mandatory prescriptions for fish passage and recommend other measures to

protect salmon, steelhead, and other anadromous fish.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 *et seq.*) is the principal law governing marine fisheries conservation and management in the United States. Chinook salmon Essential Fish Habitat (EFH) is identified and described to include all water bodies currently or historically occupied by Chinook salmon in California, and Chinook salmon EFH was identified for the upper Yuba River upstream of Englebright Dam (50 CFR 660.412(a) and part 660, subpart H, table 1). Under the MSA, Federal agencies are required to determine whether a Federal action they authorize, fund, or undertake may adversely affect EFH (16 U.S.C. 1855(b)).

At the state level, the California Fish and Game Code (CFGC) Fish and Wildlife Protection and Conservation provisions (CFGC section 1600, *et seq.*), the CESA (CFGC section 2050, *et seq.*), and the California Environmental Quality Act (CEQA) (Public Resources Code section 21000, *et seq.*) set forth criteria for the incorporation of avoidance, minimization, and feasible mitigation measures for on-going activities as well as for individual projects. The CFGC Fish and Wildlife Protection and Conservation provisions were enacted to provide conservation for the state's fish and wildlife resources and include requirements to protect riparian habitat resources on the bed, channel, or bank of streams and other waterways. CESA prohibits the taking of listed species except as otherwise provided in state law. Under the CEQA, no public agency shall approve or carry out a project without identifying all feasible mitigation measures necessary to reduce impacts to a less than significant level, and public agencies shall incorporate such measures absent overriding consideration.

Regarding the effects that establishment of the experimental population will have on the recovery of the species, the Central Valley recovery plan (NMFS 2014) characterizes the NEP Area as having the potential to support a viable population of Chinook salmon. The Central Valley recovery plan establishes a framework for reintroduction of Chinook salmon and steelhead to historical habitats upstream of dams. The framework recommends that a reintroduction program should include feasibility studies, habitat evaluations, fish passage design studies, and a pilot reintroduction phase prior to implementation of the long-term reintroduction program. In addition, the Central Valley recovery plan contains specific management strategies for recovering CV spring-run Chinook salmon that include securing existing populations and reintroducing this species into historically occupied habitats upstream of rim dams in the Central Valley of California (NMFS 2014). The Central Valley recovery plan concludes, and we continue to agree, that establishing an experimental population in the NEP Area that persists into the foreseeable future is expected to reduce extinction risk from natural and anthropogenic factors by increasing abundance, productivity, spatial structure, and diversity within California's Central Valley. These expected improvements in the overall viability of CV spring-run Chinook salmon, in addition to other actions being implemented throughout the Central Valley, which are described next, will contribute to this species' near-term viability and recovery.

Across the Central Valley, a number of actions are being undertaken to improve habitat quality and quantity for CV spring-run Chinook salmon. Collectively, implementation of the San Joaquin River Restoration Program (*https://www.restoresjr.net/*), Battle Creek Salmon and Steelhead Restoration Project (*https://www.usbr.gov/mp/battlecreek/*), and the Central Valley Flood Protection Plan (Department of Water Resources—DWR 2011) will result in many projects that will improve habitat conditions. The San Joaquin River Restoration Program will improve passage survival and spatial distribution for CV spring-run Chinook salmon in the San Joaquin River corridor. The Battle Creek Salmon and Steelhead Restoration Project will improve passage and rearing survival, spawning opportunities and spatial distribution in Battle Creek. The Central Valley Flood Protection Plan (DWR 2011) will improve juvenile rearing conditions during outmigration by creating and improving access to high quality floodplain habitats.

Climate change is expected to exacerbate existing habitat stressors in California's Central Valley and increase threats to Chinook salmon and steelhead by reducing the quantity and quality of freshwater habitat (Lindley *et al.,* 2007). Significant contraction of thermally suitable habitat is predicted, and as cold-water sources contract, access to cooler headwater streams is expected to become increasingly important for CV spring-run Chinook salmon in the Central Valley (Crozier *et al.,* 2018). For this reason and other reasons described above, we anticipate reintroduction of CV spring-run Chinook salmon into the NEP Area will contribute to their conservation and recovery.

Existing or anticipated Federal or state actions or private activities within or adjacent to the NEP Area may affect the experimental population. The NEP Area is sparsely populated and ongoing state, Federal and local activities include forest management, limited mining, road maintenance, limited residential development, grazing, and tourism and recreation. These activities will likely continue into the future and are anticipated to have minor impacts to CV spring-run Chinook salmon in the NEP Area and adjacent areas. Potential impacts from these and other activities are further minimized through application of the aforementioned state and Federal regulations. Dams and water diversions in the NEP Area currently limit fish populations in some parts of the NEP Area. NMFS anticipates releases of CV spring-run Chinook salmon will be specifically targeted into riverine reaches with abundant high-quality habitats that are not blocked by barriers to fish passage, impaired by high water temperatures or inadequate flows. The habitat improvement actions called for in the Central Valley recovery plan, as well as compliance with existing Federal, state, and local laws, statutes, and regulations, including those mentioned above, are expected to contribute to the establishment and survival of the experimental population in the upper Yuba River in the foreseeable future. Although the donor source for this reintroduction effort is anticipated to include hatchery-origin individuals from the FRH, based on the factors discussed above, we conclude it is probable that a self-sustaining experimental population of CV spring-run Chinook salmon will become established and survive in the upper Yuba River. Furthermore, we conclude that such a self-sustaining experimental population of genetically compatible individuals is likely to further the conservation of the species, as discussed above.

2. Identification of the Experimental Population and Geographic Separation From the Nonexperimental Populations of the Same Species

Section 10(j)(2)(B) of the ESA requires we identify experimental populations by regulation. ESA section 10(j)(1) also provides that a population is considered an experimental population only when, and at such times as, it is wholly separate geographically from the nonexperimental population of the same species. The NEP Area would extend upstream from Englebright Dam and include the North, Middle, and South Yuba Rivers and their tributaries up to the ridgeline. The experimental

population will be geographically separated from the extant ESU of CV spring-run Chinook salmon while in the NEP Area, but will intermingle with other Chinook salmon populations as they migrate downstream of the NEP Area, while in the ocean, and on part of their upstream spawning migration. The ''experimental'' population designation is geographically based and does not travel with the fish outside the NEP Area.

The NEP Area provides the requisite level of geographic separation because the extant population of CV spring-run Chinook salmon are currently extirpated from this area due to the presence of Englebright Dam, which blocks their upstream migration. Straying of fish from other spring-run Chinook populations into the NEP Area is currently not possible due to the presence of this dam. As a result, the geographic description of the extant CV spring-run Chinook ESU does not include the NEP Area.

NMFS anticipates that CV spring-run Chinook salmon used for the initial stages of a reintroduction program would be marked, for example, with specific fin clips and/or coded-wire tags to evaluate stray rates and allow for broodstock collection of returning adults that originated from the experimental population. Any marking of individuals of the experimental population, such as clips or tags, would be for the purpose of evaluating the effectiveness of a near-term and long-term fish passage program, and would not be for the purpose of identifying fish from the NEP Area other than for broodstock collection of returning adults. As discussed above, the experimental population is identified based on the geographic location of the fish. Indeed, if the reintroduction is successful as expected, and fish begin reproducing naturally, their offspring would not be distinguishable from fish from other Chinook salmon populations. Outside of the NEP Area, *e.g.,* downstream of Englebright Dam in the lower Yuba, lower Feather and Sacramento Rivers, or in the ocean, any such unmarked fish (juveniles and adults alike) would not be considered members of an experimental population. They would be considered part of the CV spring-run Chinook salmon ESU currently listed under the ESA. Likewise, any fish that were marked for release into the NEP Area would not be considered part of the experimental population once they left the NEP Area; rather, they would be considered part of the ESU currently listed under the ESA.

3. Is the experimental population essential to the continued existence of the species?

As discussed above, ESA section 10(j)(2)(B) requires the Secretary to determine whether experimental populations would be ''essential to the continued existence'' of the listed species. The statute does not elaborate on how this determination is to be made. However, as noted above, Congress gave some further attention to the term when it described an essential experimental population as one whose loss ''would be likely to appreciably reduce the likelihood of survival of that species in the wild'' (Joint Explanatory statement, supra, at 34). NMFS regulations incorporated this concept into its definition of an essential experimental population at 50 CFR 222.501(b), which provides an experimental population that if lost, the survival of the species in the wild would likely be substantially reduced.

In determining whether the experimental population of CV spring-run Chinook salmon is essential, we used the best available information as required by ESA section 10(j)(2)(B). Furthermore, we considered the geographic location of the experimental population in relation to other populations of CV spring-run Chinook salmon, and the likelihood of survival of these populations without the existence of the experimental population.

The CV spring-run Chinook salmon ESU includes four independent populations and several dependent or establishing populations. Given current protections and restoration efforts, these populations are persisting without the presence of a population in the NEP Area. It is expected that the experimental population will exist as a separate population from those in the Sacramento River basin and will not be essential to the survival of those populations. Based on these considerations, we conclude the loss of the experimental population of CV spring-run Chinook in the NEP Area is not likely to appreciably reduce the likelihood of the survival of the species in the wild. Accordingly, NMFS is designating this experimental population as nonessential. Under section 10(j)(2)(C)(ii) of the ESA we cannot designate critical habitat for a nonessential experimental population.

Additional Management Restrictions, Protective Measures, and Other Special Management Considerations

As indicated above, ESA section 10(j)(2)(C) requires that experimental populations be treated as threatened species, except, for nonessential experimental populations, certain portions of ESA section 7 do not apply and critical habitat cannot be designated. Congress intended that the Secretary would issue regulations deemed necessary and advisable to provide for the conservation of experimental populations just as he or she does, under ESA section 4(d), for any threatened species (Joint Explanatory Statement, supra, at 34). In addition, when amending the ESA to add section 10(j), Congress specifically intended to provide broad discretion and flexibility to the Secretary in managing experimental populations so as to reduce opposition to releasing listed species outside their current range (H.R. Rep. No. 567, 97th Cong. 2d Sess. 34 (1982)). Therefore, we are exercising the authority to issue protective regulations under ESA section 4(d) for the experimental population of CV spring-run Chinook salmon to identify take prohibitions necessary to provide for the conservation of the species and otherwise provide assurances to people in the NEP Area.

The ESA defines ''take'' to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Concurrent with the ESA section 10(j) experimental population designation, we adopt protective regulations under ESA section 4(d) for the experimental population that would prohibit take of CV spring-run Chinook salmon that are part of the experimental population, except in the following circumstances in the NEP Area:

1. Any take by authorized governmental entity personnel acting in compliance with 50 CFR 223.203(b)(3) to aid a sick, injured or stranded fish; dispose of a dead fish; or salvage a dead fish which may be useful for scientific study;

2. Any take that is incidental [2] to an otherwise lawful activity and is unintentional, not due to negligent conduct. Otherwise lawful activities include, but are not limited to, recreation, forestry, water management, agriculture, power production, mining, transportation management, rural development, or livestock grazing, when such activities are in full compliance with all applicable laws and regulations; and

3. Any take that is pursuant to a permit issued by NMFS under section

[2] Incidental take refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant. 50 CFR 402.02.

10 of the ESA (16 U.S.C. 1539) and regulations in 50 CFR part 222 applicable to such a permit.

Process for Periodic Review

Evaluation of the success of an experimental population release will require new monitoring programs developed specifically for this purpose. NMFS anticipates monitoring in the NEP Area, including fish passage efficiency, spawning success, adult and smolt injury and mortality rates, juvenile salmon collection efficiencies, competition with resident species, predation, disease and other types of monitoring will be necessary to gauge the success of the program. We anticipate the status of a reintroduced population of CV spring run Chinook salmon in the NEP Area would be evaluated during NMFS' five-year status review process under ESA 4(c)(2). During the 5-year status review, NMFS may evaluate whether the current designation under ESA section 10(j) as a nonessential experimental population is still warranted.

Summary of Comments and Responses

The public comment period for the proposed rule and draft EA was open from December 11, 2020, until March 12, 2021. Public scoping meetings were held February 3 and 11, 2021, to provide background on the project, answer questions and provide details on how to submit written comments. The purpose of the comment period is to help us better understand the concerns of the public on the experimental population designation, take and take exceptions, and associated draft EA. During the comment period, NMFS received 54 written letters with comments, germane to the rulemaking, from entities representing various agencies, nongovernmental organizations, and individuals.

In addition, NMFS engaged in prior public outreach since 2009 including numerous meetings, forums, and discussions regarding reintroduction in the upper Yuba River watershed. Outreach included multi-stakeholder forums, both federally recognized and non-recognized tribes, the Yuba Salmon Forum, the North Yuba Reintroduction Initiative, the Yuba Salmon Partnership and the Yuba Salmon Reintroduction Working Group. These various groups included a diverse array of stakeholders familiar with the Yuba River watershed, including water agencies, tribes, county officials, landowners and managers, and non-governmental organizations.

EA Appendix C contains the public comment letters received and EA Appendix D contains detailed responses. A summary of the comments and our responses to those comments is presented here. Please review EA Appendix D for additional comments and responses to comments not included herein.

Comment. Several commenters stated that we needed to be more specific regarding what actions would be exempted from ESA Section 9 liability by the 4(d) rule, that we should have included more specific examples of the types activities to be exempted, that we needed to consult with affected parties before promulgating a 4(d) rule, and that we should extend the 4(d) rule to include downstream areas.

Response. The limited protective regulations would prohibit take of the experimental population of CV spring-run Chinook salmon located within the NEP Area, except in certain circumstances as described in the EA and proposed rule, which includes any take that is incidental to an otherwise lawful activity and is unintentional, and not due to negligent conduct. We did not adopt the approach of listing all take excepted activities, but we did include some examples of common activities likely to occur in the NEP Area.

Expanding the 4(d) rule to include areas downstream of the NEP Area to the current listed range of the CV spring-run Chinook salmon ESU is not necessary because an existing 4(d) rule is in place for downstream areas. When CV spring-run Chinook salmon that originated from within the NEP Area are downstream of Englebright Dam, they will be covered under the existing 4(d) rule and will have the same protections as individuals in the extant ESU.

Comment. Commenters stated that the EA was not clear or not consistent with the proposed rule with respect to authorization of the release of fish into the NEP Area.

Response. The EA preferred alternative and the proposed rule both describe the proposed action as the designation of a nonessential experimental population under ESA section 10(j) for any CV spring-run Chinook salmon released into the upper Yuba River watershed by a permittee, authorization of the release of a nonessential experimental population of CV spring-run Chinook salmon into the NEP Area, and establishing take prohibitions for CV spring-run Chinook salmon in the NEP Area and exceptions under ESA section 4(d).

NMFS anticipates a reintroduction effort will occur in the upper Yuba River with the goal of furthering the conservation and recovery of CV Chinook salmon. NMFS' rulemaking designates and authorizes release of a nonessential experimental population of CV spring-run Chinook salmon, pursuant to ESA section 10(j), in the upper Yuba River and its tributaries upstream of Englebright Dam, and establishes take prohibitions for the nonessential experimental population and exceptions for particular activities under ESA section 4(d). Release of fish would not occur until after the completion of additional future actions as part of either a pilot reintroduction program and/or a long-term project-specific reintroduction effort. NMFS' rulemaking is an administrative step regarding the NEP designation and authorization for release of CV spring-run Chinook salmon. The rulemaking does not include or authorize specific actions regarding the capture, transport of CV spring-run Chinook salmon individuals or identification of precise release locations. These steps are necessary to implement a future reintroduction effort. NMFS intends to develop a reintroduction plan in cooperation with CDFW and other stakeholders prior to the release of CV spring-run Chinook salmon into the NEP Area. The reintroduction plan will include details regarding the source population, numbers and life stages of fish to be released, methods of fish transport, how fish will be marked and release locations within the NEP Area. Additionally, threatened CV spring-run Chinook salmon individuals from outside the NEP Area will not be captured, transported or released into the NEP Area until the necessary State of California and Federal permits are acquired by the permittee(s) for either a pilot program or long-term project-specific reintroduction effort. For example, future permitting under section 10(a)(1)(A) will be required once a reintroduction plan is submitted for regulatory review. Any collection of CV spring-run Chinook salmon as part of a pilot program or a project-specific reintroduction plan would be subject to NMFS's approval of a permit under ESA section 10(a)(1)(A), which will require additional analyses of the specific plan for capture, transport, and release of individuals under the National Environmental Policy Act (NEPA) and ESA section 7.

Comment. Some commenters thought NMFS has not worked cooperatively with stakeholders.

Response. NMFS engaged in numerous meetings, forums, and discussions regarding reintroduction in the upper Yuba River watershed since at least 2009 including multi-stakeholder forums, federally recognized and non-federally recognized tribes, the Yuba Salmon Forum, the North Yuba

Reintroduction Initiative, the Yuba Salmon Partnership, the Sierra County Fish and Game Commission, and the Yuba Salmon Reintroduction Working Group. These various groups included a diverse array of stakeholders familiar with the Yuba River watershed, including water agencies, tribes, county officials, landowners and managers, and non-governmental organizations.

Comment. We received several comments regarding instream flows that expressed concerns related to changes to instream flows and potential effects to foothill yellow-legged frogs, FERC licenses, water supply and whether baseline flows in the NEP Area would support a reintroduced population of CV spring-run Chinook salmon.

Response. The proposed action does not include changes to instream flows including changes to yellow-legged frog habitat or water supply. NMFS reviewed the best available scientific and commercial information regarding the suitability of habitat in the NEP Area to support key life stages of CV spring-run Chinook salmon including a review by the Yuba Salmon Forum (2013) and Stillwater (2013). Both reports indicate that riverine flows necessary to support the aforementioned life stages present in the upper watershed. NMFS recognizes that other agencies with authorities under the FPA may request FERC implement flow recommendations if anadromous fish are present below FERC regulated facilities. NMFS assumes that other agencies will implement laws, plans, and policies under their regulatory jurisdiction. NMFS cannot predict how other agencies will implement their regulatory framework if a nonessential population of CV spring-run Chinook salmon is reintroduced into the NEP Area.

Comment. A few commenters stated that we ignored key components of NMFS' recovery plan that provides a framework for reintroduction.

Response. The NEP Area (the upper Yuba River watershed) was identified as a high priority for reintroduction in the NMFS' Central Valley recovery plan (NMFS 2014). The recovery plan (Action ID YUR–1.1) recommends developing and implementing ''a program to reintroduce spring-run Chinook salmon and steelhead to historic(al) habitats upstream of Englebright Dam. The program should include feasibility studies, habitat evaluations, fish passage design studies, and a pilot reintroduction phase prior to implementation of the long-term reintroduction program.'' NMFS rulemaking is an initial regulatory step towards implementing reintroduction into the upper Yuba River as recommended in the recovery plan, by authorizing release of a nonessential experimental population into the NEP Area and providing substantial regulatory relief through a 4(d) rule.

Comment. Several commenters stated that we did not comply with 50 CFR 222.502(b), which requires us to consider four factors: (1) the adverse effects on extant populations as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) the likelihood that any such experimental population will become established and survive in the foreseeable future; (3) the effects that establishment of an experimental population will have on the recovery of the species; and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or state actions or private activities within or adjacent to the experimental population area.

Response. NMFS evaluated all of the factors in the EA: (1) The EA describes that donor stock will likely come from the FRH. Other potential donor stocks would only be used if those populations could sustain the removal of fish without adverse population level effects. Any collection of CV spring-run Chinook salmon would be subject to NMFS' approval of a permit under ESA section 10(a)(l)(A), which includes an HGMP and an analysis under NEPA and ESA section 7. Thus, NMFS anticipates that there will be a need for future authorization for the collection of CV spring-run Chinook salmon, an HGMP, subsequent issuance of a 10(a)(1)(A) permit, and a future analysis under the ESA and NEPA when NMFS receives a permit application.

(2) Re-establishing populations of CV spring-run Chinook salmon upstream of California's Central Valley rim dams, including the upper Yuba River, would aid in the conservation and recovery of the CV spring-run Chinook salmon ESU by increasing abundance and productivity, improving spatial structure and diversity, and reducing the risk of extinction (see EA section 1.2.5). NMFS' 2014 Central Valley recovery plan emphasizes that reintroduction of all ESA listed Central Valley salmonids into some of their currently blocked but historically accessible habitats is necessary for their conservation and recovery. Reintroduction into the upper Yuba River clearly follows recovery plan recommendations and is anticipated to directly contribute to the conservation of the ESU. In contrast, not moving forward with a reintroduction will ensure that the CV spring-run Chinook salmon remain at high risk of extinction.

(3) Included in NMFS 10(j) regulations is the requirement that NMFS have a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species. The ESA requires that NMFS conduct a status review every five years for all listed species under its regulatory jurisdiction. These requirements would ensure NMFS tracks the status of the experimental population and would develop information to assess the effectiveness of the rule, and if necessary, would trigger revision to the regulation through the rulemaking process. This would ensure that the reintroduction of CV spring-run Chinook to the NEP Area is providing for the conservation of the species as expected. Also, it would ensure the nonessential designation is reviewed periodically, and updated by regulation, if necessary. The best available information on habitat in the NEP Area indicates suitable habitat exists for CV spring-run Chinook salmon.

(4) EA Section 7.4 describes the effects of past, present, and reasonably foreseeable future actions. EA section 7.5 describes incremental impacts when added to other past, present, and reasonably foreseeable future actions. Release locations will occur in reaches with suitable habitat for the experimental population within the NEP Area.

Comment. Several commenters questioned whether the non-essential designation could be changed to an essential designation.

Response. We concluded that it is appropriate to designate the reintroduced population as non-essential after determining that the loss of the reintroduced population would be unlikely to appreciably reduce the likelihood of the survival of the species in the wild. Climate change will likely worsen the status of the extant CV spring-run Chinook salmon ESU absent significant restoration and enhancement actions in both currently accessible and historical but inaccessible habitats. The limited, impaired, and stressed conditions of currently accessible habitat are anticipated to deteriorate further due to climate change, rendering many currently accessible riverine reaches unsuitable for migration, holding, spawning, and rearing. Providing access to high quality, cold water, historical habitat that is blocked by dams will help address and partially offset these impacts. NMFS will review the status of CV spring-run Chinook salmon in the NEP Area as part of our 5-year review process. During the 5-year

review NMFS may evaluate whether the current designation under ESA section 10(j) as a nonessential experimental population is still warranted. To date, none of the NMFS nonessential experimental population designations have been changed to an essential experimental population status. Furthermore, to our knowledge, none of the USFWS' more than 60 nonessential experimental population designations have been changed to an essential experimental population status. Congress envisioned that in most cases, experimental populations would be nonessential.

Comment. Some commenters requested that we use marks or genetic tags to identify the experimental population and to help distinguish them from other fish when outside of the NEP Area.

Response. If and when a permit application for a reintroduction is received by NMFS and tagging is determined necessary, methods to mark experimental population fish will be identified.

Comment. Some commenters stated that the NEP Area described in the proposed rule and draft EA was too broad. A few commenters wanted the NEP Area to be limited to the North Yuba River. Some commenters stated that there were inconsistencies between the proposed rule and the draft EA relative to where fish would be released in the NEP Area.

Response. We determined that limiting the release to the North Yuba River could unduly constrain future opportunities and limit participation from key potential partners with interest in the upper Yuba River. Nonetheless, NMFS also acknowledges the high quality and quantity of available habitat in the North Yuba River relative to the Middle and South Yuba Rivers. A future reintroduction effort in the upper watershed, regardless of location, would need to occur in locations that provide suitable habitat, in sufficient quantity, for establishment of an independent population(s) of CV spring-run Chinook salmon into the foreseeable future.

The NEP Area, as described in the EA and rule, includes the entire upper Yuba River watershed, which extends from the crest of the Sierra-Nevada Mountains down to Englebright Dam. As described in the draft EA and proposed rule, the amount of potentially suitable habitat for anadromous salmonids in the upper Yuba River varies as a function of flow and related environmental conditions such as water temperature. Dams and water diversions in the NEP Area currently limit suitable habitat in some areas. NMFS anticipates a future reintroduction effort would target stream reaches with suitable habitat. The NEP Area includes more than the actual riverine areas where habitat could support reintroduced fish. The size of the NEP Area was specifically designed to account for possible volitional straying of CV spring-run Chinook salmon from areas targeted for release as part of a future reintroduction effort. The NEP Area also expands beyond riverine areas in order to provide ESA section 4(d) coverage for otherwise legal activities.

After review of the comments and further consideration, we have decided to adopt the proposed rule that was published in the **Federal Register** (85 FR 79980) on December 11, 2020, with only non-substantive editorial changes. Minor modifications were made to remove unnecessary regulatory language and provide clarity. The modifications make no change to the substance of the rule.

Findings

Based on the best available information, we determine that the designation of and release of a nonessential experimental population of CV spring-run Chinook salmon in the upper Yuba River NEP Area will further the conservation of CV spring-run Chinook salmon. CV spring-run Chinook salmon used to initiate the reintroduction are anticipated to come from the FRH using either donor stock from the Feather or Yuba Rivers, which is part of the CV spring-run Chinook salmon ESU. The collection of donor stock from the FRH will require issuance of a permit under section 10(a)(1)(A) of the ESA, which includes analysis under NEPA and ESA section 7. The experimental population fish are expected to remain geographically separate from the extant CV spring-run Chinook salmon ESU during the life stages in which they remain in, or are returned to, the NEP Area. At all times when members of the experimental population are downstream of Englebright Dam, the experimental population designation will not apply. Establishing an experimental population of CV spring-run Chinook salmon in the NEP Area would likely contribute to the viability of the ESU. Authorization for the experimental population release is consistent with the 2014 Central Valley recovery plan, while at the same time ensuring that a reintroduction will not impose undue regulatory restrictions on landowners and third parties.

We further determine, based on the best available scientific information, that the experimental population would not be essential to the continued existence of the CV spring-run Chinook salmon ESU, because absence of the experimental population would not be likely to appreciably reduce the likelihood of the survival of the ESU in the wild. However, as described above, the experimental population is expected to contribute to the recovery of the CV spring-run Chinook salmon ESU if reintroduction is successful. We therefore designate the population to be released as a nonessential experimental population.

Information Quality Act and Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the Information Quality Act (section 515 of Pub. L. 106–554) in the **Federal Register** on January 14, 2005 (70 FR 2664). The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal Government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on or after June 16, 2005. There are no documents supporting this rule that meet this criteria.

Classification

Executive Order 12866

This final rule has been determined by the Office of Management and Budget to be not significant under Executive Order 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule

will not have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy at the proposed rule stage that this rule will not have a significant effect on external entities, including small businesses, small organizations, or small governments. No comments were received regarding the economic impact of this final rule on small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. Because this rule requires no additional regulatory requirements for activities within the affected area, a final regulatory flexibility analysis is not required and one was not prepared.

Executive Order 12630

In accordance with Executive Order 12630, the final rule does not have significant takings implications. A takings implication assessment is not required because this final rule: (1) would not effectively compel a property owner to have the government physically invade their property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This final rule would substantially advance a legitimate Government interest (conservation and recovery of a listed fish species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Executive Order 13132

In accordance with Executive Order 13132, we have determined that this final rule does not have federalism implications as that term as defined in Executive Order 13132.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal 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. This final rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA), we have analyzed the impact on the human environment and considered a reasonable range of alternatives for this final rule. We made the draft EA available for public comment along with the rule, received 54 letters with comments germane to the rule, and responded to those comments in an Appendix to the EA. We have prepared a final EA and Finding of No Significant Impact (FONSI) on this action and have made these documents available for public inspection (see **ADDRESSES** section).

Government-to-Government Relationship With Tribes (Executive Order 13175)

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests. If we issue a regulation with tribal implications (defined as having 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) we must consult with those governments or the Federal Government must provide funds necessary to pay direct compliance costs incurred by tribal governments.

There are no tribally owned or managed lands in the NEP Area. As part of NMFS's obligations under the National Historic Preservation Act, NMFS inquired with federally recognized and non-federally recognized tribes with potential interest in the NEP Area to inform them of the rule and solicit information on cultural resources eligible for listing on the National Register of Historic Places (letters dated May 23, 2017, from Maria Rea, Central Valley Office Supervisor, NMFS, and letters dated May 26, 2020, from Cathy Marcinkevage, Central Valley Office Supervisor, NMFS). To date responses have been limited and no concerns over the proposed rule have been raised. NMFS invites tribes to meet with us to have detailed discussions that could lead to government-to-government consultation meetings with tribal governments. We will continue to coordinate with the affected tribes.

References Cited

A complete list of all references cited in this final rule is available upon request from National Marine Fisheries Service office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: December 20, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, amend the table in paragraph (e) by adding an entry for ''Salmon, Chinook (Central Valley spring-run ESU–XN Yuba)'' under ''Fishes'' in alphabetical order by common name to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species [1]			Citation(s) for listing determinations(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
FISHES					

Species [1]			Citation(s) for listing determinations(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
Salmon, Chinook (Central Valley spring-run ESU–XN Yuba).	*Oncorhynchus tshawytscha.*	Central Valley spring-run Chinook salmon only when, and at such times as, they are found in the upper Yuba River watershed, upstream of Englebright Dam.	[Insert **Federal Register** Citation], December 28, 2022.	NA	223.301
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

■ 3. In § 223.301, add paragraph (d) to read as follows:

§ 223.301 Special rules—marine and anadromous fishes.

* * * * *

(d) *Upper Yuba River Central Valley spring-run Chinook salmon experimental population* (*Oncorhynchus tshawytscha*)—(1) *Status of Upper Yuba River Central Valley spring-run Chinook salmon under the Endangered Species Act.* The Upper Yuba River Central Valley spring-run Chinook salmon population identified in paragraph (d)(2) of this section is designated as a nonessential experimental population under section 10(j) of the Endangered Species Act (ESA) and shall be treated as a ''threatened species'' pursuant to 16 U.S.C. 1539(j)(2)(C).

(2) *Upper Yuba River Central Valley spring-run Chinook salmon nonessential experimental population.* All Central Valley spring-run Chinook salmon within the NEP area in the upper Yuba River watershed upstream of Englebright Dam, as defined in this paragraph (d)(2), are considered part of the Upper Yuba River Central Valley spring-run Chinook salmon nonessential experimental population. The boundaries of the NEP area include Englebright Dam and all tributaries draining into Englebright Reservoir up to the ridgeline.

(3) *Prohibitions.* Except as expressly allowed in paragraph (d)(4) of this section, all prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538 (a)(1)) apply to fish that are part of the Upper Yuba River Central Valley spring-run Chinook salmon nonessential experimental population identified in paragraph (d)(2) of this section.

(4) *Exceptions to the application of section 9 take prohibitions in the NEP area.* The following forms of take in the NEP area identified in paragraph (d)(2) of this section are not prohibited by this section:

(i) Any taking of Central Valley spring-run Chinook salmon by authorized governmental entity personnel acting in compliance with § 223.203(b)(3) to aid a sick, injured or stranded fish; dispose of a dead fish; or salvage a dead fish which may be useful for scientific study;

(ii) Any taking of Central Valley spring-run Chinook salmon that is unintentional, not due to negligent conduct, and incidental to, and not the purpose of, the carrying out of an otherwise lawful activity; and

(iii) Any taking of Central Valley spring-run Chinook salmon pursuant to a permit issued by the National Marine Fisheries Service (NMFS) under section 10 of the ESA (16 U.S.C. 1539) and regulations in part 222 of this chapter applicable to such a permit.

[FR Doc. 2022–27953 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 248
Wednesday, December 28, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1655; Project Identifier MCAI–2022–00887–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330–201, –202, –203, –301, –302, and –303 airplanes. This proposed AD was prompted by reports of corrosion and cracks found on engine inlet attach fittings. This proposed AD would require an inspection to determine whether affected engine inlet attach fittings (brackets) are installed, and replacement of those affected engine inlet attach fittings or replacement with an inlet cowl having no affected engine inlet attach fittings, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 13, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1655; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2022–1655.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1655; Project Identifier MCAI–2022–00887–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0133, dated July 5, 2022 (EASA AD 2022–0133) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–201, –202, –203, –301, –302, and –303 airplanes. The MCAI states that findings of corrosion and cracks on engine inlet attach fittings have been reported. It was determined that the affected fittings are susceptible to stress corrosion cracking. The MCAI notes that stress corrosion cracking, if not detected and corrected, could lead to failure of one or more fittings, possibly resulting in damage to the airplane or injury to occupants.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1655.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0133 specifies procedures for an inspection to determine whether affected engine inlet attach fittings (those having certain part numbers and made of aluminum alloy 7175–T66 or 7075–T6) are installed, and replacement of those affected engine inlet attach fittings with serviceable parts or replacement with an inlet cowl having no affected engine inlet attach fittings. EASA AD 2022–0133 also prohibits the installation of affected parts. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0133 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0133 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0133 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0133 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0133. Service information required by EASA AD 2022–0133 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1655 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 11 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
5 work-hours × $85 per hour = $425	None	$425	$4,675

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
210 work-hours × $85 per hour = up to $17,850 per nacelle	Up to $10,136	Up to $27,986 per nacelle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2022–1655; Project Identifier MCAI–2022–00887–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 13, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A330–201, –202, –203, –301, –302, and –303 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Unsafe Condition

This AD was prompted by reports of corrosion and cracks found on engine inlet attach fittings. The FAA is issuing this AD to detect and correct stress corrosion cracking. The unsafe condition, if not addressed, could result in failure of one or more fittings, possibly resulting in damage to the airplane or injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0133, dated July 5, 2022.

(h) Exceptions to EASA AD 2022–0133

(1) Where EASA AD 2022–0133 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0133 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0133 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(k) Additional Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0133, dated July 5, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0133, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on December 21, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–28241 Filed 12–27–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1656; Project Identifier AD–2022–01081–A]

RIN 2120–AA64

Airworthiness Directives; Allied Ag Cat Productions, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Allied Ag Cat Productions, Inc. (Allied Ag Cat) Model G–164A and G–164B airplanes with certain supplemental type certificates (STCs) installed. This proposed AD was prompted by an accident involving an Allied Ag Cat Model G–164B airplane where the propeller pitch control (PPC) linkage detached from the PPC of the engine and resulted in an accident that significantly damaged the airplane and injured the pilot. This proposed AD would require installing a secondary retention feature (bolt, washer, and safety wire) on the PPC lever and the PPC assembly. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 13, 2023.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1656; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

• For service information identified in this NPRM, contact Honeywell International, Inc., 111 South 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; website: *aerospace.honeywell.com.*

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Justin Carter, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Parkway, Fort Worth, TX 76177; phone: (817) 222–5146; email: *justin.carter@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1656; Project Identifier AD–2022–01081–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Justin Carter, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Parkway, Fort Worth, TX 76177. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report of an accident involving an Allied Ag Cat Model G–164 airplane where the PPC linkage detached from the PPC of the engine. The pilot sustained serious injuries, and the airplane was substantially damaged. The root cause was determined to be a lack of a secondary retention feature for the PPC of the engine.

This condition, if not addressed, could result in reduced control of the airplane.

Aircraft configurations for airplanes with the potential for this condition to exist are as follows:

• Model G–164A airplanes with STC No. SA7769SW, SA7966SW, or SA8720SW installed; and

• Model G–164B airplanes with STC No. SA7546SW, SA7966SW, SA7987SW, or SA8720SW installed.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Honeywell Service Bulletin TPE331–72–2190, Revision 0, dated December 21, 2011. This service information identifies the affected PPC assemblies and applicable engines, and specifies procedures for reworking the affected PPC assemblies to incorporate a threaded hole in the splined end of the shouldered shaft. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed the Honeywell TPE331 Propeller Pitch Control Lever letter, dated August 26, 2011, addressed to the original equipment manufacturer (OEM). This letter informs the OEM of a report Honeywell received about the TPE331 PPC lever shaft becoming detached from the PPC assembly cam shaft and communicates the future development of a Honeywell service bulletin (released as Honeywell Service Bulletin TPE331–72–2190, Revision 0, dated December 21, 2011).

Proposed AD Requirements in This NPRM

This proposed AD would require installing a secondary retention feature (bolt, washer, and safety wire) on the PPC lever and the PPC assembly.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 200 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation of secondary retention feature	4 work-hours × $85 per hour = $340	$1,000	$1,340	$268,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Allied Ag Cat Productions, Inc.: Docket No. FAA–2022–1656; Project Identifier AD–2022–01081–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 13, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Allied Ag Cat Productions, Inc. airplanes, all serial numbers, certificated in any category.

(1) Model G–164A airplanes with Supplemental Type Certificate (STC) No. SA7769SW, SA7966SW, or SA8720SW installed.

(2) Model G–164B airplanes with STC No. SA7546SW, SA7966SW, SA7987SW, or SA8720SW installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 6120, Propeller Controlling System.

(e) Unsafe Condition

This AD was prompted by a report of an accident caused by the detachment of the propeller pitch control (PPC) linkage from the PPC of the engine. The FAA is issuing this AD to prevent the PPC linkage from detaching from the PPC of the engine. The unsafe condition, if not addressed, could result in reduced control of the airplane.

(f) Compliance

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

(g) Install Secondary Retention Feature

Within 12 months after the effective date of this AD, install a secondary retention feature (bolt, washer, and safety wire) on the PPC lever and the PPC assembly. If rework of the PPC assembly (specifically, the shouldered shaft within the cam assembly within the PPC assembly) is required to do this installation, do the rework in accordance with the procedures in Section 3.C(3)(d)2 of Honeywell Service Bulletin TPE331–72–2190, Revision 0, dated December 21, 2011. After the rework is completed, re-identify the part number of the PPC assembly, cam assembly, and shouldered shaft, in accordance with Sections 3.C(4), 3.C(5), and 3.C(7), as applicable, of Honeywell Service Bulletin TPE331–72–2190, Revision 0, dated December 21, 2011. Part re-identification is required only if rework is done.

Note 1 to paragraph (g): Honeywell TPE331 Propeller Pitch Control Lever letter, dated August 26, 2011, to the original equipment manufacturer, contains information related to this subject.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD.

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

(i) Related Information

(1) For more information about this AD, contact Justin Carter, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Parkway, Fort Worth, TX 76177; phone: (817) 222–5146; email: *justin.carter@faa.gov*.

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

(j) Material Incorporated by Reference

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

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

(i) Honeywell Service Bulletin TPE331–72–2190, Revision 0, dated December 21, 2011.

(ii) [Reserved]

(3) For service information identified in this AD, contact Honeywell International, Inc., 111 South 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; website: *aerospace.honeywell.com*.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on December 21, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–28220 Filed 12–27–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2022–OESE–0151]

Proposed Priorities, Requirements, and Definitions—State Tribal Education Partnership Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, and definitions.

SUMMARY: The Department of Education (Department) proposes priorities, requirements, and definitions under the State Tribal Education Partnership (STEP) program, Assistance Listing Number (ALN) 84.415A. The Department may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2023 and later years. The Department is taking this action to support the development of partnerships among Tribal education agencies (TEAs), State educational agencies (SEAs), and local educational agencies (LEAs) to support the creation or expansion of TEAs to directly administer education programs, including formula grant programs under the Elementary and Secondary Education Act of 1965, as amended (ESEA), consistent with State law and under a written agreement among the parties.

DATES: We must receive your comments on or before January 27, 2023.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *Regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Privacy Note: The Department's policy is to generally make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *Regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Donna Bussell, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W207, Washington, DC 20202–6450. Telephone (202) 987–0204. Email: *donna.bussell@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, and definitions. To ensure that your comments have maximum effect in developing the final priorities, requirements, and definitions, we urge you to clearly identify the specific section of the proposed priority, requirement, or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priorities, requirements, and definitions by accessing *Regulations.gov*. To inspect comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this document. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the STEP program is to: promote Tribal self-determination in education; improve the academic achievement of Indian children and youth; and promote the coordination and collaboration of TEAs with SEAs and LEAs to meet the unique educational and culturally related academic needs of Indian students.

Program Authority: Section 6132 of the ESEA (20 U.S.C. 7452).

Tribal Consultation: The following proposed priorities, requirements, and definitions were informed by Tribal consultation with elected Tribal leaders or their officially designated proxies. The Department held virtual Tribal consultations on April 26, 2021 and June 30, 2022, and announced the opportunities through various external community listservs. The Department sought feedback from elected Tribal leaders on a series of topics and 12 questions to inform the design of future STEP competitions. They are as follows:

First, the Department requested input on the length of grant performance periods, specifically if Tribal Nations were interested in longer grant performance periods (*e.g.,* one year versus three years). The majority of Tribal leaders who provided input were in favor of three-year grants and provided written comments expressing the need for additional time to complete grants to create TEAs. Tribal leaders were also in favor of the Department awarding more grants to expand TEAs. The Department will factor in this Tribal leader input during the development of future notices inviting applications. The grant period is specified in statute, subject to amendment by congressional appropriation and is not directly addressed by this document.

Second, the Department requested input on whether Tribal Nations are more interested in working partnerships with SEAs or LEAs. The majority of Tribal leader comments expressed the perspective that those partnerships should include both SEAs and LEAs and should be rooted in Tribal consultation at the local level. Tribal leaders also supported the need for partnerships to include both entities. In response to the comments, the Department is proposing Priority 3 to enhance Tribal consultation at the local level and encourage trilateral working relationships among TEAs, SEAs, and LEAs.

Third, the Department requested input from Tribal Nations on whether resources should be targeted toward coordinating staff, curriculum, or other existing grant opportunities. The majority of Tribal leader input expressed the need to coordinate curriculum development and existing grant opportunities. Other participants supported targeting grant resources to

funding the hiring of TEA staff. In response to the comments, the Department is proposing Priority 2 to increase coordination with ESEA title VI, part A formula programs. Coordinating with title VI, part A formula programs will help ensure TEAs have a proactive role in contributing to determining the best use of educational resources and can help strengthen the ability of TEAs and LEAs to train and retain respective program staff.

Fourth, the Department requested Tribal Nations to identify the supports needed to create a new TEA. The majority of Tribal leader input expressed the need to identify and expand Tribal services and to identify off-reservation students. Other participants expressed that all Tribal Nations need to finance a new TEA with Tribal funding and consolidate education-related services into one agency. In response to the comments, the Department is proposing Priority 1 to improve visibility and identification of Indian children and youth in public education data.

Fifth, the Department requested input from Tribal Nations on whether developing Tribal education regulatory codes is necessary for creating a TEA. The majority of Tribal leader input expressed that Tribal education codes are not necessary to create a new TEA. Other participants expressed interest in seeing examples of Tribal education codes. In response to the comments, the Department is proposing to not include Tribal education codes for the creation of a ''new TEA''. Education codes are still included in the definition of an ''established TEA'' in this document. Examples of Tribal education codes may be shared during pre-application technical assistance webinars.

Sixth, the Department requested input from Tribal Nations on whether creating a new TEA required more than a one-year performance period. The majority of Tribal leader input expressed that creating a new TEA requires more than one year and may take anywhere from two to three years. In response to the comments, the Department will factor in this Tribal leader input during the development of future notices inviting applications to the degree permissible by law.

Seventh, the Department requested input from Tribal Nations on whether there should be requirements, in addition to those in past competitions, for future STEP grants to create a TEA. The majority of Tribal leaders expressed the need for projects to include a comprehensive plan to implement non-direct services. The plan should align with Tribal needs and priorities. Other participants expressed that applicants or grantees, as appropriate, should be required to assess educational infrastructure needs, evaluate SEA and LEA training and other services provided to the TEA, and improve access to professional development opportunities for TEA leaders. In response to the comments, the Department will factor in this Tribal leader input during the development of future competitions to the degree permissible by law.

Eighth, the Department requested input from Tribal Nations on how to define ''capacity building'' as it relates to expanding or creating a TEA. The majority of Tribal leaders expressed that the definition needs to be specified in the final agreement with the SEA and LEA. Other participants recommended that the Department define ''capacity building'' as the ability to authorize teaching certifications. The Department has addressed the input on capacity building by including authorization of teaching certifications as one of the criteria within the definition of ''established TEA'' in this document.

Ninth, the Department requested input from Tribal Nations on whether they are interested in collaborating with SEAs to develop, monitor, and evaluate effective culturally responsive practices. No Tribal leaders or other participants provided input on the question.

Tenth, the Department requested input from Tribal Nations on whether they are interested in collaborating with LEAs to develop, monitor, and evaluate effective culturally responsive practices. The majority of Tribal leader input and other participants were in favor of TEAs and LEAs working together in this way. Tribal leader input expressed that TEAs should work with at least three LEAs that are required to engage in local Tribal consultation as described in section 8538(a) of the ESEA. In response to the comments, the Department is proposing Priority 3 to encourage more frequent consultation between an affected LEA and TEA. The Department is not requiring consultation with at least three LEAs due to the likelihood that a TEA may not have the capacity to maintain an ongoing relationship with three LEAs who meet the definition of ''Affected LEA'' in this document.

Eleventh, the Department requested input from Tribal Nations on whether training from the SEA to the TEA should be targeted toward data collection and analysis; grants management and monitoring; fiscal accountability; and/or other training needs. Tribal leaders were asked to prioritize by rank order. The majority of Tribal leader input expressed the need for focused training on data collection, data analysis, grants management, and monitoring, in that order. Other participants were in favor of more training regarding fiscal accountability. In response to the comments, the Department will factor in the need for training regarding data collection and analysis, grants management, and monitoring. In addition, proposed Priority 1, which is designed to address the under-identification of Indian students in public education data, reflects the importance of data collection and analysis for STEP projects. Through projects that address proposed Priority 1, Tribal Nations that want to exercise more self-determination in public education could assist LEAs in the improvement of data collection and analysis with a specific focus on improved identification of Indian students.

Twelfth, the Department requested input from Tribal Nations regarding which priorities should be considered in the next competition. Tribal leaders expressed that STEP grants should advance and support local Tribal consultation practices, especially for TEAs that have at least three LEAs required to conduct local Tribal consultation under ESEA section 8538(a). Other participants indicated that future priorities should include support for Tribal Nations to authorize Tribal schools. In response to the comments, the Department does not propose a priority specifically for authorizing tribal schools, however, it does continue to support the creation of new TEAs which may include Tribal schools. The Department proposes Priority 4 for Tribal Nations that have not received a STEP grant from the Department. Additionally, the Department proposes Priority 3 to have STEP grants support local Tribal consultation practices.

Proposed Priorities:

This document contains the following seven proposed priorities:

Proposed Priority 1—Improve Identification of Native Students in Public Education Data.

Proposed Priority 2—Increase Coordination of Indian Education Programs.

Proposed Priority 3—Enhance Tribal Consultation.

Proposed Priority 4—New STEP Grantees.

Proposed Priority 5—Create TEA.

Proposed Priority 6—Expand Early TEA.

Proposed Priority 7—Expand Established TEA.

Background: In FY 2012, the Department piloted the first cohort of STEP grants to TEAs to promote increased collaboration between TEAs and SEAs in the administration of certain State-administered ESEA formula grant programs and build the capacity of TEAs to conduct certain State-level administrative functions under those programs for eligible schools located on a reservation. By the beginning of the second year of their 3-year projects, all four STEP pilot grantees had assumed at least one State-level function, with two grantees assuming two functions, for a total of six State-level functions. In FY 2015, the Department awarded another cohort of STEP grants to TEAs to promote increased collaboration between TEAs and the SEAs and LEAs that serve students from the affected Tribes, and to build the capacity of TEAs to conduct certain administrative functions under certain ESEA formula grant programs for eligible schools, as determined by the TEA, SEA, and LEA. By the beginning of the second year of their projects, all five STEP grantees assumed SEA- or LEA-level functions, as described in their final agreements. STEP was included specifically in the 2015 reauthorization of the ESEA, and by statute includes two types of grants: grants that support establishing new TEAs and grants for expanding TEA capacity. The ESEA set out grant periods for each type of grant: one year for establishing new TEAs and three years for expanding TEA capacity. In FY 2019, the Department awarded one-year STEP grants to Tribes to support Tribes' creation of TEAs so that they would be eligible to apply for a three-year STEP grant in future fiscal years. That competition included an invitational priority, ''Promoting Sustainability through Community Engagement.'' In FY 2020, the Department awarded three-year STEP grants to TEAs to directly administer education programs, build capacity to administer and coordinate education programs, and receive training and support from and provide training and support to SEAs and LEAs. The Department established three absolute priorities via a waiver of rulemaking for the FY 2020 competition. Absolute Priority 1 supported projects to build TEA capacity to administer and coordinate education programs; Absolute Priority 2 was for established TEAs; and Absolute Priority 3 was for TEAs with limited prior experience. All applicants were required to address Absolute Priority 1. Absolute Priorities 2 and 3 allowed the Department to consider applications from TEAs with limited prior experience separately from applications from TEAs with more experience. In FY 2021, the Department conducted Tribal consultation with elected Tribal leaders and their proxies to discuss priorities, requirements, and definitions for future STEP competitions. For FY 2022, Congress authorized awards for up to five years for STEP grants through the appropriations process.

Additionally, under section 6132(c)(1) and (2) of the ESEA, the Department has authority to give priority to applicants that propose to create a new TEA or that propose to expand an existing TEA. Under proposed Priorities 5, 6, and 7, the Department prioritizes projects that create ''new TEAs,'' expand capacity of ''early TEAs,'' and expand capacity of ''established TEAs'' to help ensure Tribal Nations have options to equitably advance Tribal self-determination.

Proposed Priority 1—Improve Identification of Native Students in Public Education Data.

Background: The Department proposes this priority to assist Tribal Nations interested in expanding TEA capacity through coordinating TEA and LEA enrollment data. The priority would advance Tribal self-determination in education by creating a condition for partner SEAs or LEAs to better coordinate services and identify students who are eligible for other Indian education programs but might not be receiving services. Under section 6132(a)(3) of the ESEA, one purpose of the STEP program is to ''meet the unique educational and culturally related academic needs'' of Indian students. To do so, it is critical that Indian students are accurately identified as Indian by the LEA. Limited access to meaningful, quality data continues to be a challenge that adversely impacts Tribal communities related to the issue of under-identification of Indian students and subsequently under-resourcing. Data are essential for developing effective policies and initiatives to generate improved health and other outcomes.[1] By partnering with LEAs, a TEA may disclose a list of students who are tribally enrolled and/or affiliated to the LEA and the LEA can match and notify the parents regarding Indian education program opportunities, without disclosing the identity of eligible students to a TEA. In addition to improving delivery of equitable supports for Indian children and youth, we believe a collaboration focused on better identification of Indian students will build TEA capacity in collecting and analyzing data, consistent with Tribal consultation input, and help advance Tribal self-determination in public education.

Note: The Family Educational Rights and Privacy Act (FERPA) does not permit an LEA to disclose personally identifiable information (PII) from students' education records to a TEA without parental consent unless the disclosure meets one of FERPA's exceptions to the general consent requirement. The most relevant exceptions to FERPA's general consent requirement that may apply if certain conditions are met are the ''school official,'' ''studies,'' and ''audit/evaluation'' exceptions. For further information on FERPA, contact the Department's Student Privacy Policy Office at *https://studentprivacy.ed.gov/.*

Proposed Priority:

To meet this priority, an applicant must propose to partner with an LEA to develop and maintain effective and culturally responsive methods to better identify, and support the identification of, Indian students who may be undercounted or under-identified as eligible for an ESEA title VI formula grant program consistent with section 6112 of the ESEA. This includes identifying Indian students who are not enrolled in a Tribal Nation but who have affiliation with or descendance from a Tribal Nation as described in ESEA section 6117(d).

Proposed Priority 2—Increase Coordination of Indian Education Programs.

Background: The Department proposes this priority to assist Tribal Nations in ensuring that services under existing Indian education programs are coordinated as part of a comprehensive approach to serving Indian students. TEAs do not have purview over all Indian education programs in a given LEA, especially if TEA personnel are not identified as the authorized representative of a particular grant award. However, TEAs have direct access to cultural resources, methods, and knowledge and can provide expertise regarding culturally appropriate ways to educate and teach Indian students. One example of how a STEP grantee could meet this priority would be for the grantee to coordinate with a partner LEA that receives both a Johnson-O'Malley and an ESEA title VI Indian Education formula grant on strategies and professional development opportunities to further a culturally-appropriate education approach that benefits Indian students, TEA, and LEA staff. (Note: Consistent with ESEA section 6132(e)(2), STEP grants may not be used for direct services.) This

[1] *www.ncai.org/DataDisaggregationAIAN-report_5_2018.pdf.*

proposed priority would also help ensure TEAs are working in collaboration with LEAs, consistent with section 6132(a) of the ESEA.

Proposed Priority:

To meet this priority, an applicant must submit a high-quality plan that describes how it will strengthen its partnership with the LEA and/or SEA, to strengthen coordination among all existing federally funded Indian education grants that impact the partner LEA and/or SEA to support the academic achievement of Indian students. The plan must include goals, milestones, and timelines for coordination, and must identify which existing federally funded programs they are coordinating.

Proposed Priority 3—Enhance Tribal Consultation.

Background: The Department proposes this priority to assist Tribal Nations to expand their capacity to participate in, and strengthen, local Tribal consultation practices. For example, to address this proposed priority, applicants could propose a plan to assist LEAs in the effort to obtain consultation affirmations that are meaningful, data-driven, and timely. The proposed priority would advance Tribal self-determination in education by supporting TEAs to convene collaborative meetings with SEAs and LEAs to promote meaningful consultation that produces ongoing and timely feedback on federally funded education programs that impact Indian students, not just programs that serve only Indian students. This proposed priority would address Tribal leader interest in seeing a priority that furthers collaboration and consultation with affected LEAs that are subject to ESEA section 8538 consultation requirements. Affected LEAs subject to section 8538 must consult Tribal Nations annually regarding multiple Federal programs, and TEAs can help drive more meaningful collaboration to support Federal program implementation. The goal of the proposed priority is for TEAs to increase the frequency of consultations, develop meaningful consultation procedures, and meet goals as defined in the respective ESEA Consolidated State and Local Plans.

Proposed Priority:

Projects to improve upon existing local Tribal consultation efforts with at least one LEA. To meet this priority, applicants must provide a high-quality plan that describes how the project will increase the frequency of consultations with affected LEAs, meaningfully develop consultation procedures with LEAs, and meet SEA goals as defined in the respective ESEA Consolidated State and Local Plans.

Proposed Priority 4—New STEP Grantee.

Background: In Tribal Consultations held on April 26, 2021 and June 30, 2022, Tribal leaders requested that the Department move away from determining grants on a competitive basis because all Tribes could benefit from the STEP program, but some Tribes are not as well positioned to compete for the STEP program. However, under 2 CFR 200.205, the Department must award STEP program grants on a competitive basis. The Department proposes this priority to help applicants who have not previously received a STEP grant. The proposed priority would advance Tribal self-determination in education by assisting TEAs with less capacity to be competitive among their peer TEAs.

Proposed Priority:

To meet this priority, an applicant must be a new TEA or early TEA and must not have previously received a STEP award from the Department.

Proposed Priority 5—Create a TEA.

Background: Under section 6132(c)(1) of the ESEA, the Department is authorized to make awards to applicants who plan and develop a TEA, if the Indian Tribe or organization has no current TEA.

Proposed Priority:

To meet this priority, an applicant must not be an early TEA or established TEA.

Proposed Priority 6—Expand Capacity of Early TEAs.

Background: Under section 6132(c)(2) of the ESEA, the Department is authorized to make awards to TEAs to expand their existing capacity.

Proposed Priority:

To meet this priority, an applicant must be an early TEA.

Proposed Priority 7—Expand Capacity of Established TEAs.

Background: Under section 6132(c)(2) of the ESEA, the Department is authorized to make awards to TEAs to expand their existing capacity.

Proposed Priority:

To meet this priority, an applicant must be an established TEA.

Types of Priorities:

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

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

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

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

Proposed Application Requirement:

Background: The Department proposes the following application requirement. Under section 6132(d)(2)(C)(i) of the ESEA, a preliminary agreement with the appropriate SEA, one or more LEAs, or both the SEA and LEA must be an application requirement. In any competition, the Department could use additional statutory application requirements consistent with section 6132(d) of the ESEA.

Proposed Application Requirement 1—Draft Written Agreement with Partners.

An applicant must provide a Draft Written Agreement (DWA), with the appropriate SEA and/or LEA partner(s). For applicants creating a new TEA, a DWA is only required with an LEA. For applicants expanding capacity for an early TEA or established TEA, a DWA with both an SEA and LEA is required.

Proposed Program Requirements:

Background: The Department proposes three program requirements. The first proposed program requirement, which would require grantees to hire a project director within 60 days of the grant award notification, would help ensure staffing capacity is promptly developed so that the project objectives can be timely met and addressed with fidelity. The second proposed program requirement, which would require grantees to have a finalized written agreement with partners, is intended to ensure that the parties joining the project are committed to fulfilling the purpose of the STEP program by either creating a new TEA or expanding an existing TEA. Both proposed program requirements would advance Tribal self-determination and help the TEA eventually administer an education program, or prepare to administer an education program, on behalf of an LEA or SEA.

The second program requirement is to ensure the applicant and its SEA and

LEA partners, as applicable, have a demonstrated commitment to either create a new, or expand an existing, TEA and have considered the allocation of roles and responsibilities necessary to carry out the project. In addition, this program requirement would ensure a commitment to deliverables that advance the project goals and timeline. This proposed program requirement would advance Tribal self-determination and would help the TEA eventually administer an education program, or prepare to administer an education program, on behalf of an LEA or SEA. The draft agreement would allow applicants to be eligible for the program even though agreements may not be finalized in time for application submission.

In any competition, the Department could use one or more of the proposed program requirements in addition to statutory program requirements under section 6132 of the ESEA. The proposed program requirements are:

Proposed Program Requirement 1—Hire Project Director within 60 Days.

Grantees must hire a project director as soon as practicable, but no later than 60 days after the beginning of the performance period.

Proposed Program Requirement 2—Final Written Agreement with Partners.

Grantees must submit a final written agreement signed by all parties entering into the agreement within 120 days after receiving the grant award notification.

Proposed Definitions:

Background: The Department proposes to define the following terms for use in its STEP program competitions. Each of the defined terms is intended to provide clarity to applicants, grantees, and their partners with respect to the priorities and both the statutory and proposed application and program requirements, which we believe will help advance the ability of TEAs to exercise Tribal self-determination in public education.

Specifically, the Department is proposing the definition of ''directly administer,'' which is based on the definition in section 8538 of the ESEA, to advance the ability of TEAs to exercise Tribal self-determination in public education. Section 6132(c)(2)(A) of the ESEA requires directly administering education programs including formula grant programs under the ESEA consistent with State law and written agreements between parties but does not define this term. To clarify responsibilities under this statutory program requirement, the Department proposes to define ''directly administer.'' Direct administration enables TEAs to become the fiscal agents and subsequently become financially responsible for the administration of project objectives, funds, and reporting.

The Department derived its proposed definition of TEA from ESEA section 6132. However, we propose to expand the definition of TEA to include a TEA that includes an agency, department, or instrumentality of more than one Tribe if the Tribes are in close geographic proximity or have cultural connections to each other and agree through joint Tribal government resolution to have a combined TEA. The proposed change is responding to the request from Tribal leaders to award grants through a non-competitive process. This will allow Tribes with minimal capacity to advance common interests and promote Tribal self-determination in public education.

The Department proposes to further define ''established TEA'' and ''early TEA'' to meaningfully differentiate between STEP projects that propose to create a new TEA versus expanding an early TEA or expanding an established TEA. The rationale behind the cutoffs were to quantifiably differentiate while making grants more accessible to TEAs in early stages of development. The definitions are intended to help applicants better identify the priority that applies to their proposed project.

The Department proposes to define ''Tribal consultation'' to clarify the purpose of the consultation, the roles and responsibilities of all parties, and the need to acquire Tribal affirmation that the consultation has been conducted in accordance with the requirements. The written affirmation would ensure that the appropriate Tribal Nations were participating partners. The Department proposes to define ''Affected LEA,'' which is based on the definition in section 8538 of the ESEA.

In any competition, the Department could use one or more of these proposed definitions in addition to any statutory definitions. The proposed definitions are:

Affected LEA means a local educational agency—

(1) With an enrollment of American Indian or Alaska Native students that is not less than 50 percent of the total enrollment of the local educational agency; or

(2) For any fiscal year following fiscal year 2017, that received a grant in the previous fiscal year under subpart 1 of part A of title VI that exceeded $40,000.

Directly administer means conducting, as the fiscal agent, SEA functions or LEA functions for education programs, including ESEA formula grant programs, consistent with State law and the FWA.

Draft written agreement (DWA) means an unsigned written agreement with an attached letter of support from each LEA or SEA partner indicating each has reviewed the project plan and will finalize the DWA into an FWA within 120 days of grant award notification. The DWA must include the following:

(1) The roles and responsibilities for each partner.

(2) An agreed-upon list of deliverables (Note: deliverables cannot be direct services to Indian students).

(3) Identification of at least one point of contact for each partner.

(4) A description of the resources each partner will contribute to the project (Note: resources do not need to be monetary or matching funds).

Early TEA means a TEA that meets one or two of the criteria in the definition of established TEA.

Established TEA means a TEA that meets three or more of the following criteria:

(1) Has received a STEP grant in 2012 or subsequent years, or has an existing prior relationship with an SEA or LEA as evidenced by an FWA between the TEA and SEA or LEA.

(2) Has an existing Tribal education code.

(3) Has directly administered at least one education program within the past five years.

(4) Has administered at least one Federal, State, local, or private grant within the past five years.

(5) Has authorized teaching certifications.

Final written agreement (FWA) means a signed written agreement between the TEA and the LEA or SEA; the TEA and one or more LEAs; or the TEA and both an SEA and one or more LEAs, that documents the commitment and timeline of the agreeing partners to implement the terms and conditions specified in the DWA.

New TEA means a Tribal entity that does not meet the definition of ''early TEA'' or ''established TEA.''

Tribal consultation means that—

(1) The SEA or LEA provides Tribes the opportunity for input;

(2) The SEA or LEA consider and respond to the input from Tribal leaders or their officially designated proxies regarding an education program that affects the Tribal Nation or TEA; and

(3) The partner Tribal Nation provides written confirmation that the consultation was meaningful and in good faith.

Tribal educational agency (TEA) means the agency, department, or instrumentality of an Indian Tribe that

is primarily responsible for supporting Tribal students' elementary and secondary education. This term also includes an agency, department, or instrumentality of more than one Tribe if the Tribes are in close geographic proximity or have cultural connections to each other and agree through joint Tribal government resolution to have a combined TEA.

Note: This document does *not* solicit applications. In any year in which we choose to use any of the final priorities, requirements, and definitions, we invite applications through a notice in the **Federal Register**.

Final Priorities, Requirements, and Definitions: The Department will announce the final priorities, requirements, and definitions in a document in the **Federal Register**. We will determine the final priorities, requirements, and definitions after considering responses to the proposed priorities, requirements, and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, or definitions, subject to meeting applicable rulemaking requirements.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

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

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

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

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

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

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

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

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

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

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

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

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

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

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential benefits of this regulatory action are the increased specificity of application requirements, program requirements, and definitions that will support effective program implementation that advances Tribal self-determination between TEAs, SEAs, and LEAs. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. The proposed priorities, requirements, and definitions would impose minimal costs on entities that would receive assistance through the STEP program. Application submission and participation in the STEP program is voluntary. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, and definitions would be limited to paperwork burden related to preparing an application for the STEP program. Because the costs of carrying out activities would be paid for with STEP program funds, the costs of implementation would not be a burden for any eligible applicants, including small entities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed priorities, requirements, and definitions, easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Paperwork Reduction Act

The proposed priorities, requirements, and definitions contain information collection requirements that are approved by OMB under OMB control number 1894–0006; the proposed priorities, requirements, and definitions do not affect the currently approved data collection.

Regulatory Flexibility Act Certification

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

Although some of the Alaska Native Organizations, LEAs, and other entities that receive STEP program funds qualify as small entities under this definition, the proposed priorities, definitions, and requirements would not have a significant economic impact on these small entities. The Department believes that the costs imposed on an applicant by the proposed priorities, requirements, and definitions would be limited to the costs related to providing the documentation outlined in the proposed priorities, definitions, and requirements when preparing an application and that those costs would not be significant. Participation in the STEP program is voluntary. We expect that in determining whether to apply for STEP funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a STEP grant. An eligible entity will probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We invite comments from small entities as to whether they believe the proposed priorities, requirements, and definitions would have a significant economic impact on them and, if so, we request evidence to support that belief.

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

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

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

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

James F. Lane,

Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2022–28222 Filed 12–27–22; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0203; FRL–10510–01–R4]

Air Plan Approval; Georgia; Macon Area Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Georgia, through the Georgia Environmental Protection Division (EPD), via a letter dated October 20, 2021. The SIP revision includes a Limited Maintenance Plan (LMP) for the Macon 1997 8-hour ozone national ambient air quality standards (NAAQS) maintenance area (hereinafter referred to as the Macon 1997 8-hour Ozone NAAQS Area or Macon Area or Area). The Macon 1997 8-hour Ozone NAAQS Area consists of all of Bibb County and a portion of Monroe County located in middle Georgia. EPA is proposing to approve the Macon Area LMP because it provides for the maintenance of the 1997 8-hour ozone NAAQS within the Area through the end of the second 10-year portion of the maintenance period. The effect of this action would be to make certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Macon Area federally enforceable as part of the Georgia SIP.

DATES: Comments must be received on or before January 27, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0203 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404)

562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of EPA's Proposed Action
II. Background
III. Georgia's SIP Submittal
IV. EPA's Evaluation of Georgia's SIP Submittal
A. Attainment Emissions Inventory
B. Maintenance Demonstration
C. Monitoring Network and Verification of Continued Attainment
D. Contingency Plan
E. Conclusion
V. Transportation Conformity and General Conformity
VI. Proposed Action
VII. Statutory and Executive Order Reviews

I. Summary of EPA's Proposed Action

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to approve the Macon Area LMP for the 1997 8-hour ozone NAAQS, which was adopted by Georgia EPD on October 12, 2021, and submitted to EPA as a revision to the Georgia SIP under a letter dated October 20, 2021.[1] The Macon LMP is designed to maintain the 1997 8-hour ozone NAAQS within the Macon Area through the end of the second 10-year portion of the maintenance period beyond redesignation. As a general matter, the Macon Area LMP relies on the same control measures and applicable contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by Georgia EPD for the first 10-year period. EPA is proposing to approve the plan because it meets all applicable requirements under CAA sections 110 and 175A.

II. Background

Ground-level ozone is formed when oxides of nitrogen (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and in adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma and other lung diseases.

Ozone exposure also has been associated with increased susceptibility to respiratory infections, increased medication use, doctor visits, and emergency department visits, and increased hospital admissions for individuals with lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.[2]

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).[3] EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour ozone NAAQS would be more protective of human health, especially for children and adults who are active outdoors and for individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 30, 2004, EPA designated the Macon 1997 8-hour Ozone NAAQS Area, which consists of all of Bibb County and a portion of Monroe County in Georgia, as nonattainment for the 1997 8-hour ozone NAAQS. The designation became effective on June 15, 2004. *See* 69 FR 23858 (April 30, 2004). Subsequently, in 2007, EPA redesignated the Macon 1997 8-hour Ozone NAAQS Area to attainment for the 1997 8-hour ozone NAAQS and approved the first maintenance plan demonstrating attainment through the initial 10-year period.

EPA has revised the ozone NAAQS twice since the 1997 standards were finalized. On July 20, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS. The Macon Area was designated as attainment for that standard with an effective date of July 20, 2012. *See* 77 FR 30088 (May 21, 2012). On November 16, 2017, EPA designated areas for the 2015 8-hour ozone NAAQS. The Macon Area was designated attainment for that standard with an effective date of January 16, 2018. *See* 82 FR 54232 (November 16, 2017).

A state may submit a request to redesignate a nonattainment area that is attaining a NAAQS to attainment, and, if the area has met the criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the redesignation request.[4] One of the criteria for redesignation is for the area to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending ten years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.,* ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans, beginning with a 1992 memo referred to as the Calcagni memo. The Calcagni memo[5] provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of

[1] EPA received Georgia's SIP submission on October 20, 2021.

[2] *See* ''Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone,'' January 6, 2010, and 75 FR 2938 (January 19, 2010).

[3] In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed another review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

[4] Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[5] John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards (OAQPS), ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni memo).

emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory).[6] EPA clarified in three subsequent guidance memos that certain areas can meet the CAA section 175A requirement to provide for maintenance by showing that they are unlikely to violate the NAAQS in the future, using information such as the area design values [7] when they are significantly below the standard and have been historically stable.[8] EPA refers to a maintenance plan containing this streamlined demonstration as a limited maintenance plan, or LMP.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a state seeking an LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,[9] EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.[10]

EPA is proposing to approve the Macon LMP because Georgia has made a showing, consistent with EPA's prior LMP guidance, that the Macon 1997 8-hour Ozone NAAQS Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that the State has met the other maintenance plan requirements. Georgia EPD submitted this LMP for the Macon Area to fulfill the CAA's second maintenance plan requirement. EPA's evaluation of the Macon Area LMP is presented in section IV below.

In June 2007, Georgia EPD submitted to EPA a request to redesignate the Macon 1997 8-hour Ozone NAAQS Area to attainment for the 1997 8-hour ozone NAAQS. This submittal contained a plan, for inclusion in the Georgia SIP, to provide for maintenance of the 1997 8-hour ozone NAAQS in the Macon 1997 8-hour Ozone NAAQS Area through 2018. EPA approved Georgia's Macon 1997 8-hour Ozone NAAQS Area maintenance plan and the State's request to redesignate the Area to attainment for the 1997 8-hour ozone NAAQS effective October 19, 2007.[11]

Section 175A(b) of the CAA requires states to submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. However, EPA's final implementation rule for the 2008 8-hour ozone NAAQS revoked the 1997 8-hour ozone NAAQS and stated that one result of the revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[12] In *South Coast Air Quality Management District* v. *EPA,* the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 8-hour ozone NAAQS, second maintenance plans were not required for ''orphan maintenance areas,'' *i.e.,* areas that had been redesignated to attainment for the 1997 8-hour ozone NAAQS (maintenance areas) and were designated attainment for the 2008 ozone NAAQS. *South Coast,* 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with these ''orphan maintenance areas'' under the 1997 8-hour ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, through a letter dated October 20, 2021, Georgia submitted a second maintenance plan covering the Macon Area that provides for attainment of the 1997 8-hour ozone NAAQS through 2027.

In recognition of the continuing record of air quality monitoring data showing ambient 8-hour ozone concentrations in the Macon 1997 8-hour Ozone NAAQS Area well below the 1997 8-hour ozone NAAQS, Georgia EPD chose the LMP option for the development of its second 1997 8-hour ozone NAAQS maintenance plan for the Macon Area. On October 20, 2021, Georgia EPD adopted this second 10-year 1997 8-hour ozone maintenance plan, and subsequently submitted the Macon LMP to EPA as a revision to the Georgia SIP.

III. Georgia's SIP Submittal

Georgia's October 20, 2021, submittal includes the LMP, air quality data, a summary of the previous emissions inventory and a conclusion regarding future emission levels, and attachments, as well as certification of adoption of the plan by Georgia EPD. Attachments to the plan include documentation of notice, opportunity for hearing and public participation prior to adoption of the plan by Georgia EPD on October 20, 2021, and state legal authority. The LMP notes that Georgia's LMP submittal for the remainder of the 20-year maintenance period for the Macon Area is in response to the D.C. Circuit's decision overturning aspects of EPA's implementation rule for the 2008 8-hour ozone NAAQS. The Macon Area LMP does not include any additional emissions reduction measures but relies on the same emissions reduction strategy as the first 10-year maintenance plan that provides for the maintenance of the 1997 8-hour ozone NAAQS through 2018. Prevention of significant deterioration (PSD) requirements and control measures contained in the SIP will continue to apply, and federal measures (*e.g.,* federal motor vehicle control programs) will continue to be implemented in the Macon Area.

IV. EPA's Evaluation of Georgia's SIP Submittal

EPA has reviewed the Macon Area LMP, which is designed to maintain the 1997 8-hour ozone NAAQS within the Macon Area through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a more detailed

[6] *See* Calcagni memo at 9.

[7] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone area is the highest design value of any monitoring site in the area.

[8] *See* ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, OAQPS, dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

[9] The prior memos addressed: unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM_{10} (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment areas for the carbon monoxide (CO) NAAQS.

[10] *See, e.g.,* 79 FR 41900 (July 18, 2014) (approval of the second ten-year LMP for the Grant County 1971 SO_2 maintenance area).

[11] *See* 72 FR 53432 (September 19, 2007).

[12] *See* 80 FR 12264, 12315 (March 6, 2015).

summary of EPA's interpretation of the section 175A requirements [13] and EPA's evaluation of how each requirement is met.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOC and NO_X, as these pollutants are precursors to ozone formation. The Macon LMP includes an ozone attainment inventory for the Bibb County portion and the partial Monroe County portion of the Macon Area generated from the data EPA made available from the 2014 National Emissions Inventory (NEI) and that Georgia represents as 2014 summer tons.[14] Table 1 presents a summary of the inventory for 2014 contained in the LMP for the Bibb County portion of the Macon Area. Table 2 presents a summary of the inventory for 2014 contained in the LMP for the partial Monroe County portion of the Macon Area.

TABLE 1—2014 VOC AND NO_X EMISSIONS (SUMMER TONS) FOR THE BIBB COUNTY PORTION OF THE MACON AREA

	Point source	Nonpoint source	Onroad mobile source	Nonroad mobile source	Total
VOC	509	1,063	841	406	2,819
NO_X	899	180	1,492	170	2,741

TABLE 2—2014 VOC AND NO_X EMISSIONS (SUMMER TONS) FOR THE PARTIAL MONROE COUNTY PORTION OF THE MACON AREA

	Point source	Nonpoint source	Onroad mobile source	Nonroad mobile source	Fire	Total
VOC	167	225	251	103	9	755
NO_X	3,160	116	910	25	4	4,215

The Attainment Emissions Inventory section of the Macon Area LMP describes the methods, models, and assumptions used to develop the attainment inventory and notes that Georgia EPD relied on version 2 of the 2014 NEI.[15] Point source emissions were calculated from data collected annually from the sources and reported to the State or local air agencies. Nonpoint source emissions were estimated by multiplying an emission factor by some known indicator of collective activity, such as fuel usage, and were estimated on the county level. Nonroad mobile source emissions in the 2014NEIv2, in part, were estimated using the latest version of the EPA's motor vehicles emission model, MOVES (which includes estimates nonroad emissions like agriculture, commercial and mining, industrial and recreational equipment, and commercial and residential lawn and garden equipment). Locomotives, aircraft, and marine nonroad sources are not included in MOVES, and Georgia EPD relied on EPA-generated emissions for these sectors.[16] Onroad mobile sources in the 2014NEIv2 were estimated using MOVES and the latest planning assumptions regarding vehicle type, vehicle activity, and vehicle speeds to estimate vehicular emissions for 2014. Georgia EPD's estimates for vehicle emissions reflect emissions inventories and ancillary data files used for emissions modeling, as well as the meteorological, initial condition, and boundary condition files need to run the air quality model.

Based on our review of the methods, models, and assumptions used by Georgia to develop the inventory, EPA proposes to find that the Macon 1997 ozone NAAQS LMP includes a comprehensive, reasonably accurate inventory of actual ozone precursor emissions in attainment year 2014 and proposes to conclude that this is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

The maintenance demonstration requirement is satisfied in a LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the NAAQS, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.[17] These criteria are evaluated below.

1. Evaluation of Ozone Concentrations

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the NAAQS is attained if the design value is 0.084 ppm or below. EPA evaluated quality assured and certified 2018–2020 monitoring data (which was the most recent quality assured and certified data at the time of submission) and determined that the design value for the Macon Area was 0.061 ppm, or 73 percent of the level of the 1997 8-hour ozone NAAQS, as measured at the Macon-Forestry monitor located in Bibb County, Georgia (AQS ID: 13–021–0012). Based on

[13] *See* Calcagni memo.

[14] Georgia defines summer tons as the total cumulative emissions from May through September.

[15] Documentation and data for the 2014 NEIv2 can be accessed via the following website: *http://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data.*

[16] EPA developed emissions for these sectors based on AP–42 emissions factor, and information supplied by the Eastern Regional Technical Advisory Committee for locomotives and Federal Aviation Administration's Emissions and Dispersion Modeling System (since replaced by the Aviation Environmental Design Tool).

[17] *See* ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, OAQPS, dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

quality assured and certified monitoring data for 2019–2021 (the most recent quality assured and certified data), the current the design value for the Macon Area is 0.061 ppm, or 73 percent of the level of the 1997 8-hour ozone NAAQS, as measured in Bibb County, Georgia (AQS ID: 13–021–0012). Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (*e.g.,* below 85 percent of the NAAQS, or in this case below 0.071 ppm), then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of PSD requirements and any control measures already in the SIP and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.

Table 3 presents the design values for the monitor in the Macon Area over the 2010–2021 period. As shown, the site has been below the level of the 1997 8-hour ozone NAAQS during this time, and the most current design value is below the level of 85 percent of the NAAQS, consistent with prior LMP guidance.

TABLE 3—1997 8-HOUR OZONE NAAQS DESIGN VALUES (DV) (PPB) AT THE MONITORING SITE IN THE MACON 1997 OZONE NAAQS AREA FOR THE 2010–2021 TIME PERIOD

Location	County (State)/tribal land	AQS site ID	2008–2010 DV	2009–2011 DV	2010–2012 DV	2011–2013 DV	2012–2014 DV	2013–2015 DV	2014–2016 DV	2015–2017 DV	2016–2018 DV	2017–2019 DV	2018–2020 DV	2019–2021 DV
* Macon-Forestry Monitor.	Bibb County (Georgia).	13–021–0012	73	73	73	71	67	63	65	65	65	64	61	61

* The ozone monitor located in Bibb County within the Macon 1997 8-hour Ozone NAAQS Area at Macon-Forestry (AQS Site ID 13–021–0012) began operation in 1997 and provided data for the 1997 8-hour ozone designation finalized in 2004.

Therefore, the Macon Area is eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NO_X emissions control programs in the Macon Area, adequately provide for the maintenance of the 1997 8-hour ozone NAAQS in the Area through the second 10-year maintenance period and beyond.

2. Stability of Ozone Levels

As discussed above, the Macon Area has maintained air quality below the 1997 8-hour ozone NAAQS over the past fifteen design values.[18] Additionally, the design value data shown in Table 3 illustrates that ozone levels have been relatively stable over this timeframe, with a modest downward trend. For example, the data in Table 3 indicates that the largest year-over-year change in design value at any one monitor during these twelve design value years was 4 ppb, which occurred between the 2013 design value and the 2014 design value and between the 2014 design value and the 2015 design value, representing approximately a 6 percent decrease at monitor 13–021–0012 (Macon-Forestry). At this monitor, the design values between the 2016 design value through the 2018 design value remained steady at 65 ppb. Furthermore, there is an overall downward trend in design values for the Macon 1997 8-hour Ozone NAAQS Area. This downward trend in ozone levels, coupled with the relatively small, year-over-year variation in ozone design values, makes it reasonable to conclude that the Macon Area will not exceed the 1997 8-hour ozone NAAQS during the second 10-year maintenance period.

C. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the ozone monitoring networks operated and maintained by the states in accordance with 40 CFR part 58. The network plans, which are submitted annually to EPA, are consistent with the ambient air quality monitoring network assessment. It is important to note that the Macon Area was designated nonattainment due to ozone concentrations at the monitor located at Macon-Forestry.[19] Georgia operates a network plan that includes the ambient ozone monitoring station within the Macon Area. The annual network plan developed by Georgia follows a public notification and review process. EPA has reviewed and approved Georgia's 2021 Ambient Air Monitoring Network Plan (''2021 Annual Network Plan'') which addresses the monitor used to determine attainment for the Macon Area.[20] Separately, Georgia has committed to maintaining the monitor within the Macon Area.[21] Under a CAA section 103 grant agreement with EPA, Georgia has operated the Macon Area monitoring network since 1997, the year EPA promulgated the 1997 8-hour ozone NAAQS, and has operated the Macon-Forestry monitor in its current location since 2001. EPA provides oversight of Georgia's operation of this monitor on an annual basis through normal grant monitoring activities.

To verify the attainment status of the Area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, Georgia's 2021 Annual Network Plan, which covers the monitor within the Macon Area, has been approved by EPA in accordance with 40 CFR part 58, and Georgia has committed to continue operating of this monitor and to consulting with EPA prior to making changes to it. The State also acknowledges the obligation to meet monitoring requirements in compliance with 40 CFR part 58.[22] EPA proposes to find that there is an adequate ambient air quality monitoring network in the Macon Area to verify continued attainment of the 1997 8-hour ozone NAAQS.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to

[18] The Macon Area has maintained ozone concentrations below the 1997 8-hour ozone NAAQS since 2007, when the Area was redesignated to attainment. *See* Air Quality Design Values, Previous Design Value Reports, *https://www.epa.gov/air-trends/air-quality-design-values#previous.*

[19] *See* 69 FR 23858 (April 30, 2004) for the final designation action for the 1997 8-hour ozone NAAQS and *https://www.epa.gov/ground-level-ozone-pollution/1997-ozone-national-ambient-air-quality-standards-naaqs-nonattainment* for the monitoring data associated with the designation for the 1997 8-hour ozone NAAQS.

[20] *See* October 19, 2021, letter and approval from Caroline Freeman, Director, Air and Radiation Division, EPA Region 4 to Karen Hays, Chief, Environmental Protection Division, Georgia Department of Natural Resources, available in the docket for this proposed action.

[21] *See* 72 FR 42354 (August 2, 2007).

[22] *See* Georgia's October 20, 2021, SIP submittal at page 9.

prevent future violations of the NAAQS or to promptly remedy any NAAQS violations that might occur during the maintenance period.

The Macon Area LMP contingency plan includes tracking and triggering mechanisms to determine when control measures are needed, and a process for developing and adopting appropriate control measures. There are two potential triggers for the contingency plan. The Tier I trigger will be any 8-hour ozone monitoring reading exceeding 84 ppb at the ambient monitoring station located within the Macon Area or periodic emissions inventory updates [23] that reveal excessive or unanticipated growth greater than 10 percent in either NO_X or VOC emissions over the attainment inventory for the Macon Area. The Tier II trigger will be any recorded violation of the 1997 8-hour ozone NAAQS at the Bibb County ambient monitoring station in the Macon Area. Upon either the Tier I or Tier II triggers being activated, Georgia EPD will commence analyses to determine what additional measures, if any, will be necessary to attain or maintain the ozone standard. If activation of either trigger occurs, the plan provides a regulatory adoption process for revising emission control strategies. If Georgia's analysis determines that the Macon Area is the source of emissions that contribute to a violation, the State will evaluate those measures as specified in section 172 of the CAA for control options as well as other available measures. Georgia will implement necessary controls as expeditiously as possible, and at least one contingency measure will be implemented within 24 months after the determination, based on quality-assured ambient data, that a violation has occurred. The Georgia EPD will begin initial analysis of possible contingency measures within 6 months of the trigger occurring.[24] EPA proposes to find that the contingency provisions in Georgia's second maintenance plan for the 1997 8-hour ozone NAAQS meet the requirements of CAA section 175A(d).

E. Conclusion

EPA proposes to find that the Macon Area LMP for the 1997 8-hour ozone NAAQS includes an approvable update of various elements of the initial EPA-approved maintenance plan for the 1997 8-hour ozone NAAQS. EPA also proposes to find that the Macon Area qualifies for the LMP option and adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through the documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and historically stable design values.

EPA believes the Macon Area LMP, which retains existing control measures in the SIP, is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Macon Area over the second maintenance period (*i.e.,* through 2027) and thereby satisfies the requirements for such a plan under CAA section 175A(b). EPA is therefore proposing to approve Georgia's October 20, 2021, submission of the Macon Area LMP as a revision to the Georgia SIP.

V. Transportation Conformity and General Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93, subpart A requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicles emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A MVEB is defined as ''the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.'' *See* 40 CFR 93.101.

Under the conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). On October 16, 2007, EPA made a finding that the MVEBs for the first 10 years of the 1997 8-hour ozone maintenance plan for the Macon 1997 8-hour Ozone NAAQS Area were adequate for transportation conformity purposes. In a **Federal Register** notice dated September 19, 2007, EPA notified the public of that finding. *See* 72 FR 53432. This adequacy determination became effective on October 19, 2007. After approval of this LMP or an adequacy finding for this LMP, there is no requirement to meet the budget test pursuant to the transportation conformity rule for the Macon Area. All actions that would require a transportation conformity determination for the Macon Area under EPA's transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 as a result of EPA's adequacy finding for this LMP. *See* 69 FR 40004 (July 1, 2004).

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determinations, RTPs, TIPs, and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and meet the criteria for consultation (40 CFR 93.105) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113) as well as meet the hot-spot requirements for projects (40 CFR 93.116).[25] Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, in order for projects to be approved they must come from a currently conforming RTP and TIP. *See* 40 CFR 93.114 and 40 CFR 93.115.

VI. Proposed Action

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the Macon Area LMP for the 1997 8-hour ozone NAAQS, submitted by Georgia EPD on October 20, 2021, as a revision to the Georgia SIP. EPA is proposing to approve the Macon Area LMP because it includes an acceptable update of various elements of the 1997 8-hour ozone NAAQS maintenance plan approved by EPA for the first 10-year

[23] The Air Emissions Reporting Rule (AERR) requires state and local agencies to collect and submit criteria pollutant emissions data to EPA's Emissions Inventory System (EIS) according to the schedule in 40 CFR 51.30.

[24] See the Contingency Plan Section of the LMP for further information regarding the contingency plan, including measures that Georgia will consider for adoption if any of the triggers are activated.

[25] A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section (93.109(e)) is still required, including the hot-spot requirements for projects in CO, PM_{10}, and $PM_{2.5}$ areas.

period and retains the relevant provisions of the SIP.

EPA also finds that the Macon Area qualifies for the LMP option and that the Macon Area LMP adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes the Macon Area's 1997 8-Hour Ozone LMP to be sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Macon Area over the second 10-year maintenance period, through 2027, and thereby satisfies the requirements for such a plan under CAA section 175A(b).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve 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 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 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 proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air Pollution Control, Incorporation by reference, Intergovernmental Relations, Nitrogen Oxides, Ozone, Reporting and Recordkeeping Requirements, Volatile Organic Compounds.

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

Dated: December 20, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–28169 Filed 12–27–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 600

[Docket No. 221215–0273]

RIN 0648–BK85

Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would add species or groups of species to the Seafood Import Monitoring Program (SIMP) established pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). In addition, this proposed rule would amend SIMP regulations to clarify the responsibilities of the importer of record; amend the definition of importer of record to more closely align with the U.S. Customs and Border Protection (CBP) definition; amend the language requiring chain of custody records to be made available for audit or inspection to add a requirement that such records be made available through digital means if requested by NMFS; clarify the Aggregated Harvest Report criteria; and clarify the application of SIMP requirements to imports into the Pacific Insular Areas.

DATES: Written comments on the proposed rule must be received on or before March 28, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0119, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0119 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Rachael Confair, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service, 1315 East-West Highway (F/IS5), Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The draft Regulatory Impact Review and Initial Regulatory Flexibility Assessment supplementing this proposed rule are available on *www.regulations.gov.* Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of International Affairs, Trade, and Commerce and by submission to Information Collection Review (*https://www.reginfo.gov/public/do/PRAMain*).

FOR FURTHER INFORMATION CONTACT: Rachael Confair, Office of International Affairs, Trade, and Commerce, National

Marine Fisheries Service (phone: 301–427–8361; or email: *rachael.confair@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

NMFS issued a final rule on December 9, 2016, to establish the Seafood Traceability Program, also known as the Seafood Import Monitoring Program (SIMP)(*see* 50 CFR 300.320–300.325). The goal was to establish a risk-based traceability program as a means to combat illegal, unreported, and unregulated (IUU) fishing and seafood fraud, in response to recommendations from the Presidential Task Force on Combating IUU Fishing and Seafood Fraud. See SIMP proposed rule (81 FR 6210, February 5, 2016) and final rule (81 FR 88975, December 9, 2016) for further background. The program sets forth permitting, reporting, and recordkeeping procedures relating to the entry into U.S. commerce of certain fish and fish products, identified as being at particular risk of IUU fishing or seafood fraud, in order to implement the Magnuson-Stevens Fishery Conservation and Management Act (MSA) prohibition on the import and trade, in interstate or foreign commerce, of fish taken, possessed, transported, or sold in violation of any foreign law or regulation or in contravention of a treaty or a binding conservation measure of a regional fishery organization to which the United States is a party. 16 U.S.C. 1857(1)(Q).

Although 13 species and species groups were initially identified for inclusion in SIMP, application of SIMP requirements to shrimp and abalone was stayed through regulation because gaps existed in the collection of traceability information for domestic aquaculture-raised shrimp and abalone, which is currently largely regulated at the state level. On April 24, 2018 (83 FR 17762), NMFS issued a rule for a domestic program for comparable traceability requirements as directed under the Consolidated Appropriations Act of 2018 (Pub. L. 115–141). Subsequently, NMFS lifted the stay on shrimp and abalone on May 24, 2018. SIMP requirements have been in effect for all initial thirteen species and species groups since December 31, 2018.

The 13 species and species groups were identified based on principles for determining seafood species at risk of IUU fishing and seafood fraud (at-risk species). On behalf of the National Ocean Council Committee on IUU Fishing and Seafood Fraud, NMFS issued draft principles and a draft list of at-risk species, solicited and considered public comment, then issued the final principles (listed below) and final list of priority (at-risk) species. See 80 FR 66867 (October 30, 2015) (providing finalized principles and a list of priority species developed using the principles). As part of this process, an interagency expert working group reviewed public comments and confidential enforcement information and developed the draft list of priority species, then reviewed further public comment prior to publication of the final list of thirteen species. See 81 FR 88975, 88978 (December 9, 2016). The seven final principles are:

Enforcement Capability: The existence and effectiveness of enforcement capability of the United States and other countries, which includes both the existing legal authority to enforce fisheries management laws and regulations and the capacity (*e.g.,* resources, infrastructure, etc.) to enforce those laws and regulations throughout the geographic range of fishing activity for a species.

Catch Documentation Scheme: The existence of a catch documentation scheme throughout the geographic range of fishing activity for a species, and the effectiveness of that scheme if it exists, including whether a lack of proper documentation leads to discrepancies between total allowable catch and trade volume of a species.

Complexity of the Chain of Custody and Processing: Consideration of transparency of chain-of-custody for a species, such as the level of transshipment (in this context, the transfer of fish from one vessel to another, either at sea or in port) for a species, as well as the complexity of the supply chain and extent of processing (*e.g.,* fish that goes across multiple country borders or fish that is commonly exported for processing or that is sold as fillet block vs. whole fish) as it pertains to comingling of species or catch.

Species Misrepresentation: The history of known misrepresentation of a species related to substitution with another species, focused on mislabeling or other forms of misrepresentation of seafood products.

Mislabeling or Other Misrepresentation: The history of known misrepresentation of information other than mislabeling related to species identification (*e.g.,* customs misclassification or misrepresentation related to country of origin, whether product is wild vs. aquaculture, or product weight).

History of Violations: The history of violations of fisheries laws and regulations in the United States and abroad for a species, particularly those related to IUU fishing.

Human Health Risks: History of mislabeling, other forms of misrepresentation, or species substitution leading to human health concerns for consumers, including in particular, incidents when misrepresentation of product introduced human health concerns due to different production, harvest, or handling standards, or when higher levels of harmful pathogens or other toxins were introduced directly from the substituted species.

NMFS now seeks to expand SIMP to include additional species and species groups. In June 2022, the White House issued a National Security Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses (NSM–11, June 27, 2022), directing NOAA to initiate a rulemaking by the end of 2022, to expand SIMP to include additional species or species groups, as appropriate, to combat IUU fishing and seafood fraud. NSM–11 at Section 5(a).

In December 2020, the U.S. House of Representatives passed the 2021 Consolidated Appropriations Bill (H.R. 7667), which included an accompanying report for NOAA to develop a priority list of other species for inclusion in SIMP in order to: (1) reduce human trafficking in the international seafood supply chain; (2) reduce economic harm to the American fishing industry; (3) preserve stocks of at-risk species around the world; and (4) protect American consumers from seafood fraud. Although H.R. 7667 was not adopted into law, NOAA nevertheless published a Report to Congress in March 2022 titled ''Developing a Priority List of Species for Consideration under the Seafood Import Monitoring Program'' in response to House Report 116–455. The March 2022 Report to Congress referred to the list above as ''criteria,'' but during the development of this proposed rule, the agency decided that they are more appropriately characterized as ''goals.'' NMFS considered the four goals in its accompanying report when reviewing potential species and species groups for inclusion in SIMP. *See* Public Law 116–260 (enacting H.R. 133 as the Consolidated Appropriations Act).

NOAA's approach to this proposed rule continues to be built on the original seven principles for identifying species at risk of IUU fishing and seafood fraud under SIMP, given the objective of and authority for the program. Seafood fraud and reducing economic harm to the American fishing industry (goals 2 and

4 from House Report 116–455) are covered, respectively, under the misrepresentation and mislabeling principles and history of fishing violations, enforcement capacity, and catch documentation schemes principles.

Countering forced labor and other labor abuses in the seafood supply chain (goal 1) is an agency priority and NMFS will consider such concerns when reviewing potential species for inclusion. However, labor-abuse concerns alone will not be used as a basis for identifying species. See SIMP final rule (81 FR 88975, December 9, 2016) (explaining in response to comment 11 that, while forced labor and unfair labor practices are important issues in several fisheries and in the fish processing sector, the objective of the program is to trace seafood products from the point of entry into U.S. commerce back to the point of harvest or production for the purpose of ensuring that illegally harvested or falsely represented seafood does not enter U.S. commerce). NMFS will continue to provide information collected under SIMP to Federal agency partners, consistent with MSA data confidentiality provisions (16 U.S.C. 1881a(b)) and other Federal law, to aid in the investigation or prosecution of labor crimes and to support those agencies, through interagency groups and other actions, in efforts to address forced labor and other labor abuses.

As explained in the March 2022 Report to Congress, NMFS relies on reports and information from Federal partner agencies on forced labor, human trafficking, and child labor abuses in the seafood industry. Based on cross-referencing such information with information on Country of Origin of U.S. seafood imports, shrimp and tuna (Albacore, Bigeye, Bluefin, Skipjack and Yellowfin) are the most predominant species that are entering U.S. markets and that are vulnerable to forced labor in the supply chain. Both species groups are already included in SIMP, but this proposed rule would add other tuna species to the program.

In the March 2022 Report to Congress, NMFS described ''preserv[ing] stocks of at-risk species'' (goal 3 in House Report 116–455) as including: threatened or endangered species affected by IUU fishing, species being overharvested due to fishing pressure, and/or species protected under legislation due to population decline. Conservation and management of living marine resources is a core NMFS mandate. When reviewing potential species for inclusion in SIMP, NMFS will indicate if any of the above labor abuse concerns are raised, but will not use these concerns as a basis for adding species to SIMP.

In addition to its evaluation of priority species, NMFS reviewed the efficacy of the program's reporting and recordkeeping requirements and identified opportunities to refine the descriptions and requirements of certain data elements that International Fisheries Trade Permit (IFTP) holders are required to report, thus clarifying and standardizing information entered into the Automated Commercial Environment (ACE) for imports subject to SIMP. NMFS intends to clarify the small-scale harvest criteria for the Aggregated Harvest Report in this proposed rule. For other data elements, NMFS intends to provide further guidance to the seafood industry and trade community by updating its Implementation Guide that outlines the entry filing process for the Partner Government Agenda Message Set. NMFS is updating the Implementation Guide based on feedback and questions NMFS received from the seafood industry and trade community through the SIMP support email and phone line, and lessons gleaned from SIMP audits. The current Implementation Guide is available online at *https://www.cbp.gov/document/guidance/nmfs-pga-message-set-guidelines.*

In addition to the proposed changes, NMFS is seeking comments on whether to consider a standardized ''SIMP Form'' that would build on the current sample model forms to create a required document that encompasses all traceability elements required under the program. Through program implementation, seafood industry stakeholders have requested a standardized form for use in lieu of the optional model forms. During the initial development of SIMP, the working group decided against inclusion of a standard form due to potential duplication with existing forms, especially those required by Regional Fisheries Management Organizations (RFMOs). In revisiting this decision, NMFS will be mindful of other forms that are required by RFMOs or applicable United States programs (*e.g.,* bluefin tuna catch documents, swordfish and frozen bigeye statistical documents, NOAA Form 370, and Certificates of Admissibility required under Marine Mammal Protection Act import provisions or High Seas Driftnet Fisheries Moratorium Protection Act). If NMFS ultimately determines to pursue a standardized form, further rulemaking may be required, including justifying any duplicate information collection, as well as associated analysis and/or processes consistent with the Regulatory Flexibility Act, Paperwork Reduction Act and other applicable requirements.

Seafood Import Permitting and Recordkeeping Procedures

This proposed rule would amend SIMP regulations to clarify current provisions and add a requirement that importers of record provide chain of custody documentation through digital means upon request. NMFS proposes to amend the International Fisheries Trade Permit (IFTP) regulations (50 CFR 300.322) to clarify that the importer of record on the Customs entry filing and the IFTP holder must be the same entity. Customs and Border Protection defines ''importer of record'' under 19 U.S.C. 1484 (Section 484, Tariff Act of 1930 as amended) as the owner, purchaser, or licensed Customs broker (CBP, 2001). A foreign entity, without a United States business presence, must have a U.S. resident agent (as defined in Customs regulations 19 CFR 141.18) that must serve as the importer of record and hold the IFTP, and that is responsible for compliance with all SIMP requirements. SIMP audits have revealed that, in many cases, a third party (*e.g.,* the U.S. purchaser of the seafood) has allowed their IFTP number to be used by a foreign importer of record, even though this is not allowed under the SIMP regulations. The process for obtaining an IFTP, the responsibilities of IFTP holders, as well as the requirements for the IFTP holder to update contact information are set forth in 50 CFR 300.322.

NMFS proposes to revise the IFTP regulations at § 300.324(d) to clarify that paper or electronic copies of all chain of custody documentation required under this subpart, and all supporting records upon which an entry filing or export declaration is made, must be maintained by the importer of record or the exporting principal party in interest as applicable, and made available for inspection, at the importer's/exporter's place of business for a period of two years from the date of the import, export, or re-export. Such records must be made available to NMFS upon request. These records can be provided in electronic format (within five days from receipt of the agency's request or audit notification) or paper format (within ten days from receipt of the record request or audit notification), or unless otherwise specified by NMFS. The importer's permit status will be verified electronically through the U.S. Customs ACE as part of the normal entry filing. The proposed revisions clarify that supply chain records to support may be stored, retrieved and

submitted to NMFS electronically, when requested to support an audit or inspection, thereby reducing the burden on NMFS and the trade community.

Application to Pacific Insular Area

In addition, this proposed rule would clarify that product coming into the Pacific Insular Area as defined in the MSA (16 U.S.C. 1802(35)) would be subject to all requirements of this section except those requiring (ACE) filing. When product is moved from the Pacific Insular Area to any place within the customs territory of the United States, all requirements would apply.

Consideration of Additional Priority Species

In its March 2022 Report to Congress, NMFS stated that it was evaluating the 13 current SIMP species or species groups (collectively, referred to as ''species''), other species previously evaluated but not included in SIMP, and new species that were among the top 50 seafood imports in 2020 (by volume or value) and/or for which there were reports related to IUU fishing and seafood fraud risk. The current 13 species are Abalone (*Haliotis* spp.); Cod, Atlantic (*Gadus morhua*); Cod, Pacific (*Gadus macrocephalus*); Crab, Atlantic Blue (*Callinectes sapidus*); Crab, Red King (*Paralithodes camtschaticus*); Dolphinfish (*Coryphaena hippurus*); Grouper (Family Serranidae); Sea Cucumber (Class Holothuroidea); Snapper, Northern Red (*Lutjanus campechanus*); Shark (Orders Squaliformes, Hexanchiformes, Carcharhiniformes, Lamniformes, Orectolobiformes, Heterodontiformes, Pristiophorimormes); Shrimp (Order Natantia); Swordfish (*Xiphias gladius*); and Tuna—Albacore (*Thunnus alalunga*), Atlantic bluefin tuna (*Thunnus thynnus*), Bigeye tuna (*Thunnus obesus*), Pacific bluefin tuna (*Thunnus orientalis*), Southern bluefin tuna (*Thunnus maccoyii*), Skipjack (*Katsuwonus pelamis*), and Yellowfin (*Thunnus albacares*). The other species (new and previously evaluated) are: Anchovies; Billfish (Marlins, Spearfishes, Sailfishes); Catfish (Family Ictaluridae); Crabs, Blue (other); Crab, Dungeness; Crab, Blue King; Crab, Brown King; Crab, Golden King; Crab, Snow; Cuttlefish; Crustaceans (other); Eels; Flounder, Southern; Flounder, Summer; Haddock; Halibut, Atlantic; Halibut, Pacific; Perch, Lake (Yellow); Lobster, American; Lobster, Spiny and Rock; Mackerel; Menhaden; Mussels; Octopus; Opah (Sunfish, Moonfish); Oyster; Orange Roughy; Queen Conch; Red Drum; Snappers (Family Lutjanidae); Sablefish; Salmon, Atlantic; Salmon, Chinook; Salmon, Chum; Salmon, Coho; Salmon, Pink; Salmon, Sockeye; Scallops; Sea bass; Seaweed (Algae); Shellfish (Class Bivalvia); Skates and Rays; Sole; Squid; Sturgeon caviar; Tilapia; Toothfish; Trout; Tunas (other and bonitos); Wahoo; Walleye (Alaskan) Pollock; Weakfish; and Whiting, Pacific.

NMFS evaluated the above species using the seven original principles and built on the 2015 review with insights gleaned from SIMP audits and enforcement actions, supplemented by publicly available information on relevant Federal agency actions (*e.g.,* reports, press releases), other published reports, and news articles. In addition, NMFS consulted with the NOAA Office of Law Enforcement and agency subject matter experts, as well as other government agency contacts as appropriate. NMFS believes that the initial thirteen species and species groups remain at risk and none should be removed from SIMP, and that two single species in SIMP should be expanded to larger species groups to minimize the risk of mislabeling and product substitution to bypass SIMP requirements. In addition, NMFS identified five new species for possible inclusion in SIMP due to IUU fishing and/or seafood fraud concerns. This proposed rule would result in 18 individual species and species groups in SIMP.

NMFS notes that the SIMP regulations focus on data necessary to establish traceability from point of harvest or production to entry into U.S. commerce for imported fish and fish products. For species currently under SIMP, equivalent information is being collected at the point of entry into U.S. commerce for the products of U.S. domestic fisheries and aquaculture facilities pursuant to various Federal and/or state fishery management and reporting programs. Given that, there was no need to duplicate such requirements in the SIMP regulations. See 81 FR 88975, 88976 (responding to comment 2 on U.S. obligations under international trade agreements, in particular, with respect to national treatment). NMFS plans to follow the same approach in the current rulemaking, and thus is reviewing whether equivalent information is being collected for species proposed to be added to SIMP that are the products of U.S. domestic fisheries or aquaculture facilities. If there are gaps in collection of traceability information for domestic products that may affect the timing for inclusion of certain species under SIMP or affect whether certain species can be included.

NMFS is proposing to expand SIMP to include the following five species and species groups and expand two species groups already represented in SIMP. The estimated number of three-alpha species codes as classified by the United Nations Food and Agriculture Organization's Aquatic Sciences and Fisheries Information System (ASFIS) and Harmonized Tariff Schedule (HTS) codes that are associated with the proposed species are provided below.

NMFS also solicits public comment on the principles identified for inclusion of a species, information supporting or not supporting application of a principle to a species, economic or other impacts of including a species in SIMP, information on whether equivalent information is being collected for proposed species that are the products of U.S. domestic fisheries, or comments on any other aspects of this proposed rule.

Proposed Expansion of Single-Species to Larger Species Groups

Proposed Inclusion of All Species in the Snapper (Lutjanidae) Family

NMFS proposes to expand the SIMP priority species list to include all species in the Snapper (Lutjanidae) family. ''Unspecified snapper species'' is one of the top 50 seafood products imported into the United States. The United States imported an estimated 24,581 mt (valued at $215M) of Lutjanidae species in 2021. Mexico, Brazil, Panama, and Nicaragua (in descending order) account for the majority of snapper imported into the United States by both volume and value. Northern Red Snapper (*Lutjanus campechanus*) is already subject to SIMP reporting due to its history of fisheries violations, particularly illegal harvests in the U.S. Exclusive Economic Zone (EEZ) by Mexican lanchas (*see* 2021 Report to Congress submitted under the High Seas Driftnet Fishing Moratorium Protection Act, *https://media.fisheries.noaa.gov/2021-08/2021ReporttoCongressonImprovingInternationalFisheriesManagement.pdf*), the lack of a catch documentation scheme and enforcement capability outside the United States, and a strong history of species substitution with some species presenting human health risks, due to parasites and natural toxins (80 FR 66867, October 30, 2015). The same factors that led to the species inclusion in 2015 exist today and, for that reason, NMFS believes that Northern Red Snapper should remain in SIMP and that other snapper species should be included as well. Although highly regulated in the United States,

the red snapper fishery in the Gulf of Mexico is routinely subject to illegal fishing by Mexican *lanchas* (small-sized vessels usually intended for short trips close to shore). Mexico appears to have limited capacity to address such violations, which continue to pose significant challenges to U.S. enforcement. Red snapper continues to be substituted with rockfish (which presents parasite hazard), porgy, and other snappers that may have natural toxins and different hazards (Food and Drug Administration (FDA) Import Alert 16–04: Detention Without Physical Examination of Seafood Products That Appear To Be Misbranded). In addition, agency subject matter experts and enforcement partners have anecdotally shared concerns of misreporting and an uptick in snapper mislabeling. These concerns are based on the snapper landings at Tamaulipas, Mexico bound to the United States through Brownsville, Texas. Under this proposed rule, no additional HTS codes would be required as the only two HTS codes for *Lutjanidae* species are already listed under SIMP. Inclusion of all snappers would add about 92 new ASFIS three-alpha species codes under SIMP.

NMFS has particular concern about the potential to mislabel Northern Red Snapper as another snapper species that is not subject to reporting and recordkeeping requirements. Snapper has been identified in multiple public reports as commonly mislabeled (Canadian Food Inspection Agency, 2021; FDA, 2021; Leahy, 2021; Wallstrom *et al.,* 2020; FDA, 2018; New York City Attorney General, 2018; Warner, 2016). While *Lutjanus campechanus* is the only species permitted to be marketed as ''red snapper'' by the FDA Seafood List, there are roughly 28 additional snapper species that include the word ''red'' in their common or vernacular name (*e.g.,* Caribbean Red Snapper as a common name for the FDA approved market name 'snapper', or Pacific Red Snapper as vernacular for the approved FDA market name 'rockfish'). In reviewing declared snapper species data in 2019 and 2021, NMFS found that approximately 19 percent of imports declared the species as either Northern Red Snapper (''SNR'') or the flagged non-specific snapper in the Lutjanid family (''SNX''). NMFS is continuing to analyze these imports, and consult with CBP, on species code usage and trends before and after SIMP implementation.

As noted above, illegal fishing for snapper species by Mexican *lanchas* in the U.S. EEZ continues to be of concern. *Lanchas* are known to catch finfish stocks that are regulated by the United States, including red snapper. In the 2021 Report to Congress under the High Seas Driftnet Fishing Moratorium Protection Act, NMFS identified Mexico for having vessels fishing illegally in U.S. waters in the Gulf of Mexico. Mexico was previously identified for this same issue in 2015, 2017, and 2019. Mexico has also been negatively certified for failing to address the activities for which it was identified in 2017 and 2019, and its vessels have been subject to denial of privileges in U.S ports until Mexico addresses the illegal *lancha* incursions. Despite the increasing number of prosecutions by Mexico and the imposition of fines on Mexican nationals found guilty of fishing in U.S. waters, the United States remained concerned that these actions had not yet had a material effect on the number of incursions. The United States imported 4,796,693 kilograms of fresh and frozen snapper from Mexico in 2018 (with a declared value of $33,036,108). Based on previous consultations with Mexico it appears that, while control of the licensed fleet may have improved, there continues to be an unlicensed fleet that operates without meaningful monitoring or control by Mexico.

Expanding Tuna Species Group To Include Additional Tuna Species

SIMP currently includes five general species of tunas (albacore, bigeye, bluefin, skipjack, and yellowfin) due to a history of fishing violations, transshipment and complex supply chains, lack of a complete documentation scheme (even across various reporting and management mechanisms), and substitution history (80 FR 66867, October, 30, 2015). Tuna species are highly regulated domestically and internationally, and in some cases are already subject to tracking or catch documentation. However, due to the high volume and high value of most tuna species, existing enforcement capabilities remain insufficient, as reflected in continued reports of IUU fishing. NMFS believes all of the above issues are still present today, thus the currently listed tuna species should remain in SIMP. Based on concerns about illegal fishing, misrepresentation, and species misreporting in the supply chains from multiple nations, this proposed rule would expand the tuna species group under SIMP to include the following: slender tuna (*Allothunnus fallai*), bullet tuna (*Auxis rochei*), frigate tuna (*Auxis thazard*), kawakawa (*Euthynnus affinis*), spotted tunny (*Euthynnus alletteratus*), black skipjack tuna (*Euthynnus lineatus*), blackfin tuna (*Thunnus atlanticus*), longtail tuna (*Thunnus tonggol*), bonito—sometimes marketed as dogtooth tuna—(*Gymnosarda unicolor*), escolar—sometimes marketed as white tuna—(*Lepidocybium flavobrunneum*), hamachi/yellowtail/amberjack—sometimes marketed as racing tuna—(*Seriola quinqueradiata*), or other species marked or described as ''tuna.''

In 2021, the United States imported approximately 269,845 mt (valued at $1.8B) of the tuna species currently covered under SIMP, as well as about 16,943 mt ($54M) of additional tuna species proposed. Thailand, Vietnam, and Indonesia account for the majority of U.S. tuna imports currently covered under SIMP. Vietnam, the People's Republic of China, and Thailand account for the majority of imports of the proposed additional tuna species. Tuna is in the top 50 seafood imports for the United States. Inclusion of the expanded tuna species group would add approximately eight HTS codes and 27 ASFIS three-alpha species codes (depending on scope) to SIMP.

With regard to illegal fishing, NMFS identified three vessels harvesting unspecified tuna and bycatch species in the 2020 Notice of Foreign Fishing Vessels presumed to have engaged in IUU fishing (CSMS #43272528), an alert to the U.S. trade community that products harvested by these vessels are prohibited from entry and/or subject to seizure/forfeiture under 16 U.S.C. 1857(1)(Q). All three vessels were operating within the International Commission for the Conservation of Atlantic Tunas (ICCAT) Area and identified as *Ocean Star No. 2* (Vanuatu-flagged in 2016, but presumed stateless), *Mario 11* (Senegal-flagged), and *Mario 7* (Senegal-flagged). The 2021 Report to Congress under the High Seas Driftnet Moratorium Protection Act provides further details on the above vessels. In the 2017 and 2019 Report to Congress under the High Seas Driftnet Fishing Moratorium Protection Act, NMFS identified Ecuador for failure to fully investigate Inter-American Tropical Tuna Commission (IATTC) purse seine vessels authorized to fish for tuna. Ecuador was later positively certified in 2021 due to corrective actions and increased participation in IATTC Compliance Committee and responsiveness to all new identified cases.

In a nationwide operation in 2019, in cooperation with CBP and FDA, NMFS found that importers misidentified some consignments of tuna in the entry filing as bonito, which has significantly lower tariff rates. In addition to NMFS actions, CBP identified 32 companies

misreporting tuna as bonito and took actions to recover nearly $600,000 in lost revenue to the United States due to the underpayment of tariffs (NMFS, 2021).

The FDA Seafood List accepts ''tuna'' as the market name for 15 species, eight of which do not require SIMP data reporting (*e.g.,* frigate tuna, longtail tuna). There are three additional species that use ''tuna'' in their common or vernacular name but are not allowed to be marketed as ''tuna'' (*e.g.,* dogtooth tuna). All eleven of these species can be and are confused with the species of tuna that require SIMP reporting. Due to the lack of species-specific reporting more broadly, NMFS is unable to identify exactly which tuna species are being mislabeled and/or misrepresented.

As noted earlier, tuna (Albacore, Bigeye, Bluefin, Skipjack and Yellowfin) and shrimp are the U.S. seafood imports most vulnerable to forced labor. In 2019, 2020, 2021, and 2022, CBP has issued six Withhold Release Orders (WRO) for the suspected use of forced labor during operations on five individual fishing vessels (*Tunago No. 61, Yu Long No. 2, Da Wang, Yi Hsing No. 12,* and *Hangton No. 112*) and all fishing vessels owned by a one company (Dalian Ocean Fishing Co. Ltd.). All six WROs identified tuna as one of the species harvested during harvesting operations on the fishing vessels (CBP, 2022). The most recent WRO was for the Fijian flagged *Hangton No. 112* tuna longliner, owned by Hangton Pacific Co., which exports 95 percent of its fresh and frozen tuna products to the United States and Japan and smaller quantities to other nations, according to *Seafood Source* (White, 2021).

Additional Priority Species for Inclusion on the SIMP Priority Species List

Cuttlefish and Squid

NMFS is proposing to add squid and cuttlefish to SIMP as a single species group. There is significant overlap between the fisheries for both species as well as documented mislabeling of squid as cuttlefish. The two species also share certain U.S. tariff codes. NMFS identified the following risk principles for cuttlefish and squid: lack of enforcement capability, species substitution, lack of catch document scheme, history of fishing violations, chain of custody and processing complexity, and other misrepresentation. NMFS evaluated squid in 2015 and did not find enough risk across the suite of principles to warrant SIMP inclusion (80 FR 66867, October 30, 2015). Since then, new information has demonstrated the escalating fishing pressure on squid, the lack of enforcement capacity, and the increased reports of mislabeling and potential for IUU fishing, especially illegal and unregulated fishing (Lawrence et al., 2022; Park et al., 2020; World Wildlife Fund–Trygg Mat Tracking (WWF–TMT), 2020).

Squid is one of the top 50 seafood imports for the United States. In 2021, the United States imported approximately 40,412 mt ($245M) of squid and cuttlefish. The People's Republic of China, India, and Thailand (in descending order) are the three largest exporters of cuttlefish and squid to the United States. Inclusion would add an estimated 15 HTS codes and 240 ASFIS three-alpha species codes.

NMFS found multiple reports of species substitution for cuttlefish in association with squid and/or octopus mislabeling (Lawrence, 2022; Ho *et al.,* 2020; Department of Justice (DOJ), 2019; Luque & Donlan, 2019; National University of Singapore News, 2019; Golden & Warner, 2014). In 2019, two corporations in the New York area pleaded guilty to defrauding over ten grocery stores, in violation of the Lacey Act. The defendants imported, processed, marketed, and distributed over 113,000 pounds of giant squid from Peru falsely labeled as octopus (DOJ, 2019).

Squid and cuttlefish have also been the subject of IUU fishing. China, along with various other nations, has taken action against the Chinese distant water fleet (DWF) for illegal fishing for squid and cuttlefish in South American waters (Godfrey, 2019; Godfrey, 2016). In 2016, Argentina sank a Chinese state-owned vessel for repeated illegal harvests. Other nations have taken action against Chinese DWF, such as Ivory Coast's confiscation of two vessels in 2014 and Peru's 2004 detention and fines issued to nine vessels (Godfrey, 2016). In 2019, China issued fines and revised its domestic law on its DWF requiring tracking systems and certificates of origin for legally landed squid (Godfrey, 2019). Despite this, in 2020, Argentina sent China an official complaint about its squid jiggers illegally operating in Argentina's EEZ (Godfrey, 2020). In 2021, China announced a short moratorium on its squid fishing fleets in the Atlantic and Pacific (Godfrey, 2021). A World Wildlife Fund-Trygg Mat Tracking report estimates that unregulated squid fisheries in the Indian Ocean expanded by 830 percent (from 30 to 279 fishing vessels) between 2015 and 2019. The Indian Ocean area subject to increased fishing is beyond the Southern Indian Ocean Fisheries Agreement convention area and the EEZs of Oman and Yemen (WWF–TMT, 2020). The fishing pressure on squid and cuttlefish fisheries is expected to continue to meet the demand in Asian and other foreign markets.

Octopus

NMFS proposes to add octopus to SIMP due to the species' close connection to squid and cuttlefish fisheries and the following principles: species substitution, lack of enforcement capability, lack of catch document scheme, history of fishing violations, and other misrepresentation. NMFS is not adding octopus to the cuttlefish and squid species group because these species do not share any HTS codes. NMFS evaluated octopus in 2015 and did not find enough risk across the suite of principles to warrant SIMP inclusion (80 FR 66867, October 30, 2015). Since then, various reports have claimed that octopus is at risk for IUU fishing and fraud. Octopus is among the top 50 seafood products imported into the United States. In 2021, the United States imported roughly 30,565 mt ($259M) of octopus. Spain, Indonesia, and Mexico (in descending order) are the three largest exporters of octopus to the United States. Inclusion would add approximately five HTS codes and 75 ASFIS three-alpha species codes to SIMP.

The *World Octopus Fisheries* (2019) report mentions the difficulty of tracking the trade of octopus products due to the ''high levels'' of IUU fishing (Warwick *et al.,* page 397). While data on octopus is limited when compared to squid and cuttlefish, there are documented cases of illegal harvests in Europe and Northern Africa. In 2021, 35 kilos of undersized octopus were seized in Puerto de Mazarrón, Spain (Murcia Today, 2021). In 2022, *Seafood Source* reported on Morocco's National Institute of Fisheries Research report claiming the octopus populations declined by 60 percent due to the illegal fishing and trafficking activities of an organized group of operators (Loew). Earlier this year, Morocco's Prime Minister announced its expansion of Marine Protected Areas and increased resource protection to counter IUU fishing efforts (Oirere, 2022). From 2018 to October 2022, the United States imported approximately 118 million kilograms of octopus from Morocco and Spain, valued at $974 million (NMFS, 2022).

The Monterey Bay Aquarium Seafood Watch Program has noted enforcement concerns and illegal fishing for the common octopus and the Mexican Four-

eyed octopus in the Gulf of Mexico, similar to the concerns with common red octopus in 2015 (Seafood Watch, 2021; Felbab-Brown, 2020).

The substitutability of octopus and squid is also a concern (Lawrence, 2022; Luque & Donlan, 2019; Pramod *et al.,* 2014; Golden & Warner, 2014). There have been some varieties of squid that have been improperly substituted for more expensive octopus, including by a domestic food processor and distribution companies that were found guilty of mislabeling squid as octopus in violation of the Lacey Act (DOJ, 2019).

Eels (Anguilla spp.)

NMFS is proposing to add eels to SIMP. NMFS evaluated eels in 2015 and did not find enough risk across the suite of principles to warrant SIMP inclusion (80 FR 66867, October 30, 2015). Since then, there has been a significant increase in domestic and international illegal fishing for and trafficking in eels. NMFS identified the following risk principles for eels: lack of enforcement capability, lack of catch document scheme, history of fishing violations, chain of custody and processing complexity, other misrepresentation, and human health risks. In 2021, the United States imported approximately 7,924 mt (valued at $80M) of eels. The People's Republic of China is by far the largest exporter of eels to the United States, followed by Thailand and Taiwan in decreasing magnitude. Inclusion would add approximately eight HTS codes and 13 ASFIS three-alpha species codes to SIMP.

As described below, there have been several domestic and international enforcement efforts and cases on the illegal harvesting and trafficking of eels. The relationship between the history of violations and enforcement capability associated with eels is unclear at this time, and further complicated by the increase in fishing pressure due to market demand and the capacity to illicitly harvest and transport. NMFS is concerned that the enforcement cases indicate a wider problem and believes SIMP inclusion would facilitate future enforcement through better access to harvest and landing data required for U.S. entry.

A 2022 FDA Import Alert (16–131) warned of the detention without Physical Examination of farm-raised shrimp, dace, and eel from China due to the presence of new animal drugs and/or unsafe food additives. The FDA flagged residues of gentian violet, malachite green, and mebendazole for eels under the specific Import Alert. Contaminant levels from pollutants in European eels have been reported to be a human health concern (Guhl *et al.,* 2014).

Due to high demand in Asian markets, harvesters have turned to the American eel to fill the void resulting from depleted stocks of Japanese and European eels. Elver (juvenile eel) harvesting is prohibited in the United States as a result of overfishing, except in Maine and South Carolina where the fishery is regulated (Atlantic States Marine Fisheries Commission (ASMFC), 2021; Scientific American, 2015; DOJ, 2018). However, American, European, and Japanese elvers are frequently targeted (International Criminal Police Organization (INTERPOL), 2021). An INTERPOL Environmental Security Programme report describes the ''epidemic'' of illegal commercial harvest and trafficking of elvers from Europe to Asia since the European Union initiated the zero export quota for the European eel. The eels are matured, harvested, processed, and exported as non-Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) species, such as American or Japanese eels. INTERPOL found species mislabeling was easily done as the species are difficult to distinguish without DNA testing and the products are labeled as ''eel'' (INTERPOL, 2021). The INTERPOL report also discussed the connection between criminals' exploitation of fisheries products like eels with other criminal and administrative abuses to maximize profits, such as avoiding customs regulations, tax fraud, human trafficking, and food fraud.

In 2022, the United States Department of Justice indicted American Eel Depot and associates for smuggling large quantities of live juvenile European eels from Europe to its factory in China. The government seized six containers that predominantly contained European eels but were intentionally labeled as American eels to circumvent detection by law enforcement. The European Union banned exports of European eel outside member nations in 2010. Per the indictment, the defendants imported roughly 138 containers of eel into the United States over four years, with an estimated market value of over 160 million (DOJ, 2022). The live juvenile eels would be reared in China to maturity, then harvested, processed, and imported to the United States for sushi products. The Department of Justice press release states that ''eel poaching and smuggling is one of the world's biggest wildlife trafficking problems, based on both the number of animals and the amount of money that changes hands in the black market'' (DOJ, 2022). Additional enforcement initiatives related to illegal harvesting and trafficking of elvers from the United States to other nations (exports) include the United States Fish and Wildlife's Operation Broken Glass in 2018 and a joint enforcement operation across 18 nations sampling eel meat imported in violation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora in 2018–2019 (DOJ, 2018; Sustainable Eel Group, 2020). During the latter operation, the United States found several imports of European eel, and further testing detected malachite green in the product (Sustainable Eel Group, 2020).

Queen Conch

NMFS is proposing to add Queen Conch (Family Strombidae) to SIMP due to IUU fishing in the Caribbean, lack of enforcement capacity, a lack of a catch document scheme, and human health risks. NMFS evaluated Queen Conch in 2015 and did not find enough risk across the suite of principles to warrant SIMP inclusion (80 FR 66867, October 30, 2015). Since then, NMFS conducted a Status Review for an Endangered Species Act proposed listing (discussed further below) that found significant illegal, unreported, and unregulated fishing of Queen Conch throughout the region. NMFS believes species inclusion in SIMP will deter illegally harvested Queen Conch from being exported to the United States, and the harvest and landing data reported will aid in enforcement efforts. In 2021, the United States imported 702 mt (valued at $14M) of conch (unspecified and *Aliger* species, formerly referred to as *Strombus* species). Approximately 70 percent of all internationally traded conch meat is consumed in the United States (CITES, 2021). Due to this high export rate and the high occurrence of IUU fishing documented, NMFS does not believe that existing regional enforcement capabilities are sufficient. Honduras, Belize, and Nicaragua (in descending order) are the three largest exporters of Queen Conch to the United States. Inclusion would add approximately three HTS codes and 40 ASFIS three-alpha species codes. In addition to the single Queen Conch species, NMFS may include in the final rule additional species, such as *Aliger* species (*A. costatus*, *A. pugilis, A. raninus, A. gallus,* and *A. goliath*), to prevent circumvention of SIMP reporting requirements, and seeks public input on the scope of the species to be included.

Reports of IUU fishing for Queen Conch are relatively common in the Caribbean (Horn *et al.,* 2022). Due to

concerns over the status of the species, NMFS is proposing to list Queen Conch as a threatened species under the Endangered Species Act (87 FR 55200, September 8, 2022). The proposed rule states that IUU fishing is a significant factor in the species decline of queen conch, representing approximately 15 percent of the total annual catch of the species (likely an underestimate). Illegal fishing of Queen Conch was especially prevalent in the Bahamas, Colombia, the Dominican Republic, Honduras, and Jamaica. The FDA initiated Import Alert 16–31 *Detention Without Physical Examination of Frozen Raw and Cooked Conchmeat* due to the high levels of detention of conchmeat from the Dominican Republic due to decomposition since 1985 (though the rate seems to have declined). In addition, at least two Caribbean nations have inquired about or encouraged NMFS to consider the inclusion of Queen Conch in SIMP. The United States, Puerto Rico, and the U.S. Virgin Islands have existing regulations for Queen Conch harvest. The domestic Queen Conch fishery is managed by NMFS and the Caribbean Fishery Management Council. Florida prohibited the Queen Conch fishery in the mid-1980s. Puerto Rico and the U.S. Virgin Islands manage the Queen Conch fishery in their respective territorial waters, and the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands manages the fishery in Federal waters (NMFS, 2022). Queen Conch is listed under CITES in Appendix II, which requires issuance of a valid CITES permit prior to export (or re-export). A CITES export permit may only be issued if the specimen was legally obtained (legal acquisition finding) and if the export will not be detrimental to the survival of the species (a non-detriment finding). Despite these measures, illegal harvest of Queen Conch persists. More information on the Caribbean nations' management and exploitation rates (harvesting) is available in the Endangered Species Act Status Review Report for Queen Conch (Horn *et al.,* 2022).

Caribbean Spiny Lobster

NMFS is proposing to add Caribbean spiny lobster (*Panulirus argus*) and associated species to SIMP based on the following risk principles: lack of enforcement capability, lack of catch document scheme, and history of fishing violations. NMFS evaluated several species of lobster in 2015, which included North American species (*e.g.,* American Lobster and Caribbean Spiny Lobster) and non-native species (*e.g.,* Rock Lobster and other Spiny Lobsters). At the time, NMFS did not find enough risk across the suite of principles to warrant SIMP inclusion (80 FR 66867, October 30, 2015). In the 2015 review, the interagency Working Group noted general enforcement concerns for Caribbean Spiny Lobster and intermittent issues in the past with spiny lobster imports for size and labeling from Caribbean nations. Since then, new information has demonstrated the escalating pressure on the foreign stocks of spiny lobsters (*Panulirus* spp.), increased reports of IUU fishing, and little oversight and lack of enforcement capacity. NMFS is proposing to add all *Panulirus* species as spiny lobsters are commonly harvested together, commingled through the supply chain, and marketed interchangeably (pre- and post-U.S. entry). NMFS believes the inclusion of all spiny lobsters will discourage circumvention of SIMP reporting requirements and seeks public input on the scope of the species to be included. In 2021, the United States imported approximately 19,115 mt (valued at $860M) of spiny lobster (*Panulirus* spp.). Canada, Brazil, and Honduras are major exporters of spiny lobster to the United States. While Canada appears to be the predominant exporter of spiny lobster, this may not in fact be the case, but rather may be due to the use of general HTS codes for both spiny lobster and cold-water lobster (*Homarus* spp.). NMFS is unable to differentiate prevalence of lobster species as the species-level data is not currently reported upon entry. Inclusion of spiny lobsters in SIMP would add roughly ten HTS codes and 46 ASFIS three alpha species codes.

NMFS subject matter experts believe Caribbean Spiny Lobster should now be included in SIMP due to a history of illegal fishing in the Caribbean and lack of enforcement capacity, as well as lack of a catch documentation scheme. Several articles substantiated these concerns in domestic and foreign waters in the Caribbean. A report prepared on behalf of the intergovernmental organization Caribbean Community (CARICOM) found the lack of monitoring, control, and enforcement of existing regulations and widespread IUU fishing are significant obstacles for the Caribbean spiny lobster fishery (Winterbottom *et al.,* 2012). These concerns and findings on IUU fishing of spiny lobster are echoed in a Monterey Bay Aquarium Seafood Watch report that noted the challenges in the Bahamas, Belize, Brazil, Honduras, and Nicaragua in enforcing fisheries regulations for Caribbean Spiny Lobster and the resulting high occurrence of IUU fishing (Sullivan, 2013). Other reports include a local Florida news source that noted the prevalence of poaching in the state's waters and the officials' aggressive stance to prosecute such cases (Stanwood, 2021). A Bahamas publication, *The Tribune,* reported that illegal or unregulated lobster harvests in the country represent around 36 percent of total landed catch (Hartnell, 2022). *InSite Crime* reported that lobster is a target species in the illegal fishing activities in the disputed archipelago of San Andrés between Colombia and Nicaragua (Mistler-Ferguson, 2021). A 2009 unpublished study notes the lack of enforcement and illegal fishing trends of Caribbean spiny lobsters with undersized lobsters sent to foreign markets via third party countries (Ehrhardt *et al.,* 2009).

As cold-water lobsters (*Homarus* spp.) are well-managed and considered relatively low risk, only spiny lobsters are being proposed for inclusion under SIMP. NMFS acknowledges that SIMP reporting for spiny lobster could be circumvented by using the ASFIS three-alpha code for cold-water lobster as NMFS has seen for similar species. However, NMFS believes the separate HTS codes and the difference in physical characteristics of cold water and warm water lobster would facilitate identification and the distinguishing of the two crustacean groups (*i.e.,* only cold water lobsters have claws).

NMFS notes that there have been reports of labor abuses in the spiny lobster fishery (Department of Labor (DOL), 2020; DOL, 2022; Department of State, NMFS, 2020). The Department of Labor (2020, 2022) identified use of child labor for lobster harvesting in reports from Honduras. In 2004, the Honduran Government was sued by the Honduran Miskito Association of Disabled Divers and the Association of Miskito Women and the Council of Elders in the Inter-American Court of Human Rights (IACHR) for not holding a company accountable for labor abuses (Morris *et al.,* 2020; Avalos, 2021; IACHR, 2019). The court ruled in favor of the divers in 2021 (IACHR, 2021; Zorob & Candray, 2021). U.S. imports of lobster, predominantly spiny lobster, from Honduras from 2017–2021 amounted to approximately 5.2M kg and were valued at $174M (NMFS, 2021). In addition, NMFS notes another H.R. 7667 goal to reduce economic harm to the American fishing industry with this species. Domestic stocks of Caribbean Spiny Lobster are well-managed and regulated, and the imported lobster from foreign harvests subject to IUU fishing

concerns prevent a fair and competitive trade environment.

Aggregated Harvest Report Criteria

NMFS proposes revising the Aggregated Harvest Report exemption as described in § 300.321(b)(1) to clarify the criteria of the small-scale harvest accommodation as a record made at a single collection point on a single calendar day for aggregated catches by multiple small-scale fishing operations. For small-vessel harvests, this means aggregated at a single collection point on a single day by vessels of no more than 20 measured gross tons or by vessels less than 12 meters in overall length. The catch is offloaded at the same collection point on the same calendar day, or landed by a vessel to which the catches of one or more small-scale vessels were transferred at sea. The number of vessels contributing to the collection point for that day must be included in the Aggregated Harvest Report. For small-scale aquaculture operations, this means a record made at a single collection point or processing facility on a single calendar day for aggregated deliveries from multiple small-scale aquaculture facilities, where each aquaculture facility delivers no more than 1,000 kilograms to the same collection point or processing facility on that day. The number of farms contributing to the collection for that day must be included in the Aggregated Harvest Report. An Aggregated Harvest Report may not be used for information for catches harvested by vessels greater than 20 measured gross tons or greater than 12 meters in length overall, catches collected from multiple locations or landed on different days, or deliveries of more than 1,000 kilograms from aquaculture facilities. This proposed rule would add clarifying text to the definition of aggregate harvest report and move the substance of the exemption to a new provision in the regulations, § 300.324(g).

Classification

NMFS is issuing this proposed rule pursuant to section 305(d) (16 U.S.C. 1855(d)) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* The NMFS Assistant Administrator has determined that this proposed action is necessary to implement MSA section 307(1)(Q) and is consistent with the provisions of the MSA and other applicable laws, subject to further consideration after public comment.

Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

NMFS has prepared a regulatory impact review of this action, which is available from NMFS (see **ADDRESSES**). This analysis describes the economic impact this proposed action will have on businesses and consumers.

The primary objective of this proposed rule is to collect or have access to additional data on imported fish and fish products to determine that they have been lawfully acquired and are not fraudulently represented and to deter illegally caught or misrepresented seafood from entering into U.S. commerce. These data reporting and recordkeeping requirements affect, *inter alia,* importers of seafood products, many of which are small businesses. Given the level of imports contributing to the annual supply of seafood, collecting and evaluating information about fish and fish products sourced overseas are a part of normal business practices for U.S. seafood dealers.

The permitting, electronic reporting, and recordkeeping requirements proposed by this rulemaking would build on current business practices (*e.g.,* information systems to facilitate product recalls, to maintain product quality, or to reduce risks of food-borne illnesses) and are not estimated to pose significant adverse or long-term economic impacts on small entities.

If this rule is finalized, NMFS estimates there will be approximately 487 new applicants for the IFTP, with an estimated industry-wide increase in annual costs to importers of $23,863 in permit fees. Data sets to be submitted electronically to determine product admissibility are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted under existing trade monitoring programs (*e.g.,* tuna and swordfish), or collected in support of third party certification schemes voluntarily adopted by the trade. Incremental costs are likely to consist of developing interoperable systems to ensure that the data are transmitted along with the product to ensure the information is available to the entry filer.

The proposed rule would apply to U.S. entities that import fish and fish products derived from the designated species. This proposed rule would be implemented so as to avoid duplication or conflict with any other Federal rules. To the extent that the proposed requirements overlap with other reporting requirements applicable to the designated species, this will be been taken into account to avoid collecting data more than once or by means other than the single window (ACE portal). As stated above, this rule is intended to allow NMFS to determine that imported seafood has been lawfully acquired and is not fraudulently represented and to deter illegally caught or misrepresented seafood from entering into U.S. commerce. Given the large volume of fish and fish product imports to the U.S. market, the number of exporting countries, and the fact that traceability systems are being increasingly used within the seafood industry, it is not expected that this rule would significantly affect the overall volume of trade or alter trade flows in the U.S. market for fish and fish products that are legally harvested and accurately represented.

Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule will have on small entities and includes a description of the action, why it is being considered, and the legal basis for this action. The purpose of the RFA is to relieve small businesses, small organizations, and small governmental entities of burdensome regulations and recordkeeping requirements. Major goals of the RFA are: (1) To increase agency awareness and understanding of the impact of their regulations on small business, (2) to require agencies to communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. Below is a summary of the IRFA for the proposed rule which was prepared in conjunction with a Regulatory Impact Review (RIR). The IRFA/RIR is available from NMFS (see **ADDRESSES**).

The primary objective of this proposed rule is to collect or have access to additional data on imported fish and fish products to determine that it has been lawfully acquired and is not fraudulent and to deter illegally caught or misrepresented seafood from entering into U.S. commerce. These data reporting and recordkeeping requirements affect *inter alia* importers of seafood products, many of which are small businesses. Given the level of imports contributing to the annual supply of seafood, collecting and

evaluating information about fish and fish products sourced overseas are a part of normal business practices for U.S. seafood dealers. The permitting, electronic reporting and recordkeeping requirements proposed by this rulemaking would build on current business practices (*e.g.,* information systems to facilitate product recalls, to maintain product quality, or to reduce risks of food borne illnesses) and are not estimated to pose significant adverse or long-term economic impacts on small entities.

If this rule is finalized, NMFS estimates there will be approximately 487 new applicants for the IFTP (all considered small-businesses), with an estimated industry-wide increase in annual costs to importers of $23,863 in permit fees. Data sets to be submitted electronically to determine product admissibility are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted under existing trade monitoring programs (*e.g.,* tuna, swordfish, current SIMP species), or collected in support of third-party certification schemes voluntarily adopted by the trade. NMFS has estimated that submission of an IFTP application, preparation and submission of message sets to ACE, maintaining the supply chain record keeping, and responding to audit requests would amount to $2,356,117 in the first year and every three years (for broker software acquisition and maintenance), and $895,117 each of the other years. The average importer of the priority species subject to the Program would incur an annual cost of $3,727 in the first year and every three years and $727 each of the other years.

The proposed rule would apply to U.S. entities that import fish and fish products derived from the designated priority species. This proposed rule would be implemented so as to avoid duplication or conflict with any other Federal rules. To the extent that the proposed requirements overlap with other reporting requirements applicable to the designated priority species, this will be taken into account to avoid collecting data more than once or by means other than the single window (ACE portal). As stated above, this rule is intended to allow NMFS to determine that imported seafood has been lawfully acquired and is not fraudulently represented and to deter illegally caught or misrepresented seafood from entering into U.S. commerce. Given the large volume of fish and fish product imports to the U.S. market, the number of exporting countries, and the fact that traceability systems are being increasingly used within the seafood industry, it is not expected that this rule would significantly affect the overall volume of trade or alter trade flows in the U.S. market for fish and fish products that are legally harvested and accurately represented.

NMFS considered several alternatives in this rulemaking: The requirements described in the proposed rule, a no-action alternative and various combinations of data reporting and recordkeeping for the supply chain information applicable to the priority species. NMFS prefers the proposed rule approach as it would respond to the NSM–11 request. In addition, it is consistent with the existing requirement that all applicable U.S. Government agencies are required to implement the International Trade Data System (ITDS) under the authority of the SAFE Port Act and Executive Order 13659, streamlining the Export/Import Process (79 FR 10657, February 28, 2014). Also, the proposed rule takes into account the burden of data collection from the trade and the government requirements for admissibility determinations.

Paperwork Reduction Act

This proposed rule revises an existing collection-of-information requirement (Control Number 0648–0732) previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This revised requirement has been submitted to OMB for approval. The information collection burden for the requirements proposed under this rule (IFTP, harvest and landing data submitted at entry, and provision of records of supply chain information when selected for an audit) as applicable to imports of the designated priority is estimated to be 23,985 hours. Compliance costs are estimated to total $23,863 for the permit application fees, $439,907 for data submission into ACE, $391,040 for supply chain recordkeeping, and $34,880 for audit response. To determine estimates, NMFS evaluated the entry filings imported under the HTS codes of the proposed species, as well as the three-alpha species code declared as appropriate. To estimate labor costs of respondent burden, NMFS applied the mean wage rate of Buyers and Purchasing Agents (Bureau of Labor Statistics Code 13–1020). This labor category most closely corresponds to fish importers and customs brokers who will be knowledgeable of the origin of the fish products, code the message set, submit electronic entries in ACE and respond to record requests when selected for audits. As of August 2022, the mean wage rate for this occupation series was estimated at $34.88 per hour (*https://www.bls.gov/oes/current/oes131020.htm*).

IFTP Requirement: NMFS estimates that approximately 62 percent of the 1,269 importing companies of the proposed candidate species already have an IFTP (under existing agency requirements).

The online permit application process, including an abbreviated renewals process, is estimated to require 20 minutes on average. The increase in the number of annually issued IFTPs is estimated to be 487 permits, representing an increase of 162 hours and $5,664 in burden hours.

Data Set Submission Requirement: Data sets to be submitted electronically to determine product admissibility are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted under existing trade monitoring programs (*e.g.,* tuna, swordfish), or collected in support of third party certification schemes voluntarily adopted by the trade. Incremental costs are likely to consist of developing interoperable systems to ensure that the data are transmitted along with the product to ensure the information is available to the entry filer. NMFS estimates that the number of entries for candidate species is approximately 42,040 annually. The estimated time to prepare the relevant message set is expected to be consistent with 0648–0732, which is a weighted average of 18 minutes to prepare and submit the message set to ACE. The additional responses represent an increase 12,612 hours and a total annual labor cost of $439,907 (at an estimated $34.88/hour labor rate).

Audit Response: NMFS does not expect the number of entries selected for an audit under SIMP to change. Approximately 2,000 entries are selected for audit under SIMP annually. NMFS estimates that retrieving and submitting records electronically takes about 30 minutes per event on average. For 2,000 responses, this represents a burden of 1,000 hours and a total annual labor cost of $34,880 at an estimated $34.88/hour labor rate.

This proposed rule does not anticipate any other information collection burden than what is identified in this section, and therefore is not requesting approval from OMB for the burden associated with any other aspects of the rule. Send comments on these or any other aspects of the collection of information to the NMFS Office for International Affairs, Trade, and Commerce at the **ADDRESSES** above,

and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Exports, Fish, Fisheries, Fishing, Fishing vessels, Foreign relations, Illegal, unreported, or unregulated fishing, Imports, International trade permits, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fish, Fisheries, Fishing, Fishing vessels, Foreign relations, Illegal, unreported, or unregulated fishing, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: December 16, 2022.

Janet L. Coit,

Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart Q, and 50 CFR part 600, subpart H, are proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority for part 300 continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.,* 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 5501 *et seq.,* 16 U.S.C. 2431 *et seq.,* 31 U.S.C. 9701 *et seq.*

Subpart Q—International Trade Documentation and Tracking Programs

■ 2. In § 300.321, revise the definitions for ''Aggregated Harvest Report'' and ''International Fisheries Trade Permit'' to read as follows:

§ 300.321 Definitions.

* * * * *

Aggregated Harvest Report means the record described in § 300.324(g).

* * * * *

International Fisheries Trade Permit (or IFTP) means the permit issued by NMFS under § 300.322.

* * * * *

■ 3. In § 300.322, revise paragraph (a) to read as follows:

§ 300.322 International Fisheries Trade Permit.

(a) *General.* Any person who imports, as defined in § 300.321, exports, or re-exports fish or fish products regulated under this subpart from any ocean area must possess a valid International Fisheries Trade Permit (IFTP) issued under this section. Fish or fish products regulated under this subpart may not be imported into, or exported or re-exported from, the United States unless the IFTP holder files electronically the documentation and the data sets required under this subpart with U.S. Customs and Border Protection (CBP) via ACE at the time of, or in advance of, importation, exportation, or re-exportation. The importer of record and IFTP holder identified in an entry filing must be the same entity. If authorized under other applicable laws and regulations, a representative or agent of the IFTP holder may make the electronic filings on behalf of the IFTP holder. Only persons residing in the United States are eligible to apply for the IFTP. A resident agent of a nonresident corporation (see 19 CFR 141.18) may apply for an IFTP.

* * * * *

■ 4. In § 300.323, revise paragraph (a) to read as follows:

§ 300.323 Reporting and recordkeeping requirements.

(a) *Reporting.* Any person who imports, exports, or re-exports fish or fish products regulated under this subpart must file all data sets, reports, and documentation as required under the AMLR trade program, HMS ITP, TTVP, and Seafood Import Monitoring Program (SIMP), and under other regulations in this title that adopt the requirements of this subpart. For imports, specific instructions for electronic filing are found in Customs and Trade Automated Interface Requirements (CATAIR) Appendix PGA (*https://www.cbp.gov/document/guidance/appendix-pga*). For exports, specific instructions for electronic filing are found in Automated Export System Trade Interface Requirements (AESTIR) Appendix Q (*https://www.cbp.gov/document/guidance/aestir-draft-appendix-q-pga-record-formats*). For fish and fish products regulated under this subpart, an ACE entry filing or AES export filing, as applicable, is required, except in cases where CBP provides alternate means of collecting NMFS-required data and/or document images.

* * * * *

■ 5. Revise § 300.324 to read as follows:

§ 300.324 Seafood Traceability Program.

This section establishes a Seafood Traceability Program (also known as the Seafood Import Monitoring Program) which has data reporting requirements at the time of entry for imported fish or fish products and recordkeeping requirements for fish or fish products entered into U.S. commerce. The data reported and retained will facilitate enforcement of section 307(1)(Q) of the Magnuson-Stevens Act and the exclusion of products from entry into U.S. commerce that are misrepresented or the product of illegal or unreported fishing. The data reporting and recordkeeping requirements under the program enable verification of the supply chain of the product offered for entry back to the harvesting event(s). In addition, the permitting requirements of § 300.322 pertain to importers of products within the scope of the program.

(a)(1) For species or species groups subject to this Seafood Traceability Program, data is required to be reported and retained under this program for all fish and fish products, whether fresh, frozen, canned, pouched, or otherwise prepared in a manner that allows, including through label or declaration, the identification of the species contained in the product and the harvesting event. Data is not required to be reported or retained under this program for fish oil, slurry, sauces, sticks, balls, cakes, pudding and other similar fish products for which it is not technically or economically feasible to identify the species of fish comprising the product or the harvesting event(s) contributing to the product in the shipment.

(2) The following species or species groups are subject to this Seafood Import Monitoring Program: Abalone (*Haliotis* spp.); Cod, Atlantic (*Gadus morhua*); Cod, Pacific (*Gadus macrocephalus*); Conch, Queen (Family Strombidae); Crab, Atlantic Blue (*Callinectes sapidus*); Crab, Red King (*Paralithodes camtschaticus*); Dolphinfish (*Coryphaena hippurus*); Eel (*Anguilla* spp.); Grouper (Family Serranidae); Lobster (*Panulirus* spp., Family Scyllaridae); Octopus (Order Octopoda); Sea Cucumber (Class Holothuroidea); Snapper (Family Lutjanidae); Shark (Orders Squaliformes, Hexanchiformes, Carcharhiniformes, Lamniformes, Orectolobiformes, Heterodontiformes, Pristiophorimormes); Shrimp (Order Natantia); Squid and Cuttlefish—Cuttlefish (Order Sepiida), Coastal squid (Order Myopsida), and Neritic squid (Order Oegopsida); Swordfish (*Xiphias*

gladius); and Tuna—Albacore (*Thunnus alalunga*), Atlantic bluefin tuna (*Thunnus thynnus*), Bigeye tuna (*Thunnus obesus*), Blackfin tuna (*T. atlanticus*), Black skipjack tuna (*E. lineatus*), Bullet tuna (*Auxis rochei*), Frigate tuna (*Auxis thazard*), Kawakawa (*Euthynnus affinis*), Longtail tuna (*T. tonggol*), Pacific bluefin tuna (*Thunnus orientalis*), Spotted tunny (*E. alletteratus*) Slender tuna (*Allothunnus fallai*), Southern bluefin tuna (*Thunnus maccoyii*), Skipjack (*Katsuwonus pelamis*), Yellowfin (*Thunnus albacares*), and Bonito—sometimes marketed as dogtooth tuna– (*Gymnosarda unicolor*), escolar—sometimes marketed as white tuna—(*Lepidocybium flavobrunneum*), hamachi/yellowtail/amberjack—sometimes marketed as racing tuna—(*Seriola quinqueradiata*), or other species marked or described as ''tuna''. The harmonized tariff schedule (HTS) numbers applicable to these species or species groups are listed in the documents referenced in paragraph (c) of this section.

(3) The following species or species groups are also subject to this Seafood Traceability Program: Abalone and Shrimp. The harmonized tariff schedule (HTS) numbers applicable to these species or species groups are listed in the documents referenced in paragraph (c) of this section. The Seafood Traceability Program for these species or species groups consists of two components:

(i) The data reporting requirements of paragraphs (b)(1) through (3) and (c) of this section in conjunction with § 300.323(a); and

(ii) The permit requirements of § 300.322, the IFTP number reporting requirement in paragraph (b)(4) of this section in conjunction with § 300.323(a), and the recordkeeping requirements of § 300.323(b) which includes the recordkeeping of all information specified in paragraphs (b) and (e) of this section.

(b) In addition to data reporting requirements applicable, pursuant to other authorities and requirements set out elsewhere in U.S. law and regulation (*e.g.,* under other NMFS programs or U.S. CBP requirements), to the particular commodity offered for entry, the importer of record is required to provide the following data set in ACE at the time of entry into U.S. commerce for each entry containing the species or species groups listed under paragraph (a) of this section:

(1) Information on the entity(ies) harvesting or producing the fish: Name and flag state of harvesting vessel(s) and evidence of fishing authorization; Unique vessel identifier(s) (if available); Type(s) of fishing gear used to harvest the fish; Name(s) of farm or aquaculture facility. Vessel-, farm-, or aquaculture facility-specific information is not required if the importer of record provides information from an Aggregated Harvest Report as provided under paragraphs (b)(2) and (3) and (g) of this section, unless the product offered for entry is subject to another NMFS program that requires data reporting or documentation at an individual vessel, farm, or aquaculture facility level.

(2) Information on the fish that was harvested and processed: Species of fish (Aquatic Sciences Fishery Information System 3-alpha code as listed at *https://www.fao.org/*); product form(s) at the point of first landing whether unprocessed or processed prior to landing/delivery; and quantity and/or weight of the product(s) as landed/delivered. When an Aggregated Harvest Report is used, the importer must provide all of the information required under this paragraph (b)(2), but may provide the total quantity and/or weight of the product(s) landed/delivered on the date of the report.

(3) Information on where and when the fish were harvested and landed: Area(s) of wild-capture or aquaculture location; location of aquaculture facility; point(s) of first landing; date(s) of first landing, transshipment, or delivery; and name of entity(ies) (processor, dealer, vessel) to which fish was landed or delivered. When an Aggregated Harvest Report is used, the importer must provide all of the information under this paragraph (b)(3). Some product offered for entry may be comprised of products from more than one harvest event and each such harvest event relevant to the contents of the shipment must be documented; however, specific links between portions of the shipment and a particular harvest event are not required.

(4) The NMFS-issued IFTP number for the importer of record.

(c) The importer of record, either directly or through an entry filer, is required to submit the data under paragraph (b) of this section through ACE as a message set and/or image files in conformance with the procedures and formats prescribed by the NMFS Implementation Guide and CBP and made available at: *https://www.cbp.gov/trade/ace/catair.* All harvest events contributing to the inbound shipment must be reported, but links between portions of the shipment and particular harvest events are not required.

(d) Imported shipments of fish or fish products subject to this program may be selected for inspection and/or the information or records supporting entry may be selected for audit, on a pre- or post-release basis, in order to verify the information submitted at entry and/or determine compliance with this part. To support such inspection and audits, the importer of record must make all records required to be maintained under paragraph (e) of this section available for audit or inspection, at the importer's place of business for a period of two years from the date of the import. In addition, upon request by NMFS, the importer of record (IOR) must transmit records in the manner specified to *simp.audits@noaa.gov* or National Seafood Inspection Laboratory, 3209 Frederic St, Pascagoula, MS 39567. Unless otherwise specified by NMFS, requested records must be submitted within five days from receipt of the record request if the importer of record choose to transmit the records via electronic means over email or using a secure file sharing service as identified by the agency. If the importer of record chooses to transmit the records via secured shipping such as UPS, FedEx or U.S. Post Office, the agency must receive the records within ten days from receipt of the record request, unless otherwise specified by NMFS.

(e) In addition to the entry recordkeeping requirements specified at 19 CFR part 163, the importer of record is required to maintain records of the information reported at entry under paragraph (b) of this section, as well as records containing information on the chain of custody of the fish or fish products sufficient to trace the fish or fish product from point of entry into U.S. commerce back to the point of harvest, including individual or Aggregated Harvest Reports, if any, and information that identifies each custodian of the fish or fish product (such as any transshipper, processor, storage facility, or distributor). The latter may include widely used commercial documents such as declarations by the harvesting/carrier vessels or bills of lading. The importer of record must retain records of information reported at entry and chain-of-custody in electronic or paper format, and make them available at the importer of record's place of business for a period of two years from the date of product entry.

(f) Product coming into the Pacific Insular Area, as defined in 16 U.S.C. 1802(35), is subject to all requirements of this section except the ACE filings required under paragraphs (b) and (c) of this section. However, when product is moved from the Pacific Insular Area to any place within the customs territory

of the United States, all requirements of this section apply.

(g) An Aggregated Harvest Report, as provided in paragraphs (b)(2) and (3) of this section, may be used to record aggregated catches from small-scale fishing vessels made at a single collection point on a single calendar day, or aggregated deliveries from small-scale aquaculture facilities made at a single collection point or processing facility on a single calendar day.

(1) A small-scale fishing vessel, for purposes of this section, is no more than 20 measured gross tons or less than 12 meters in length overall. An Aggregated Harvest Report may also be used for catches landed by a vessel to which the catches of one or more small-scale fishing vessels were transferred at sea. Aggregated Harvest Reports must include the number of vessels contributing to the collection point for that day.

(2) A small-scale aquaculture facility, for purposes of this section, delivers no more than 1,000 kilograms to the same collection point or processing facility on the single calendar day specified in an Aggregated Harvest Report. Aggregated Harvest Reports must include the number of aquaculture facilities contributing to the collection point or processing facility for that day.

(3) An Aggregated Harvest Report may be used for catches by fishing vessels less than 20 measured gross tons or less than 12 meters in length overall, from catches collected from multiple locations or landed on the same calendar day; or aquaculture facility deliveries of less than 1,000 kilograms, or deliveries made at multiple locations or on the same calendar day.

■ 6. In § 300.325:

■ a. Remove the word ''and'' at the end of paragraph (b);

■ b. Remove the period at the end of paragraph (c) and add ''; and'' in its place; and

■ c. Add paragraph (d).

The addition reads as follows:

§ 300.325 Prohibitions.

* * * * *

(d) Submit an entry filing under § 300.324(b) that includes an IFTP number assigned by NMFS to an entity other than the importer of record.

PART 600—MAGNUSON–STEVENS ACT PROVISIONS

■ 7. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

Subpart H—General Provisions for Domestic Fisheries

■ 8. In § 600.725, revise paragraph (a) to read as follows:

§ 600.725 General prohibitions.

* * * * *

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, export, or re-export, any fish or parts thereof taken or retained in violation of the Magnuson-Stevens Act or any other statute administered by NMFS or any NMFS regulation in this title or permit issued thereunder, or import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation, or any treaty or in contravention of a binding conservation measure adopted by an international agreement or organization to which the United States is a party.

* * * * *

[FR Doc. 2022–27741 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 248
Wednesday, December 28, 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

Submission for OMB Review; Comment Request

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 January 27, 2023 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.

Rural Housing Service

Title: American Rescue Plan Act, 2021 (ARPA)—7 CFR PART 3550, ''DIRECT SINGLE FAMILY HOUSING SECTIONS 502 and 504 LOAN PROGRAMS

OMB Control Number: 0575–NEW.

Summary of Collection: USDA Rural Development (RD) is committed to helping improve the economy and quality of life in rural America. RD's Rural Housing Service (RHS or Agency) offers a variety of programs to build or improve housing and essential community facilities in rural areas.

The Housing Act of 1949 provides the authority for the RHS's direct single family housing loan and grant programs. The programs provide eligible applicants with financial assistance to own adequate but modest homes in rural areas. 7 CFR part 3550 sets forth the programs' policies and the programs' procedures can be found in its accompanying handbooks (Handbook-1–3550 and Handbook–2–3550). To originate and service direct loans and grants that comply with the programs' statute, policies, and procedures, RHS must collect information from low- and very low-income applicants, third parties associated with or working on behalf of the applicants, borrowers, and third parties associated with or working on behalf of the borrowers.

The American Rescue Plan (ARP) Act of 2021 (Pub. L. 117–2; H.R. 1319, section 3207) appropriated an additional $39 million of Budget Authority (BA) for Single Family Housing (SFH) section 502 and 504 Direct Loan Program borrowers. The BA equated to approximately $656.6 million of ARP program funding available in FY 21; due to a change in the subsidy rate, there are approximately $1.955 billion of program funding available in FY 22. Funds remain available until September 30, 2023. The stated purpose of the American Rescue Plan (ARP) Act of 2021 is to provide ''*additional relief to address the continued impact of COVID–19* on the economy, public health, state and local governments, *individuals,* and businesses.'' Therefore, the Agency's initial objective under the ARP Act is to refinance the existing 24,000 Section 502 direct and Section 504 borrowers *who have been granted and received a COVID–19 payment moratorium.* Refinancing these loans with a lower interest rate and extended terms will help provide needed relief to borrowers, so that mortgage payments are more affordable post-moratorium. The Agency has made every effort to streamline the ARPA application process by using existing direct application processes, documents, etc., and eliminate requirements which are not applicable for ARPA (*e.g.,* credit verifications). Likewise, due to the unique nature of ARPA it was necessary to create or modify some items specific to ARPA as explained later in this document.

Need and Use of the Information: Information needed for origination purposes is largely collected by RD field staff from applicants and third parties associated with or working on behalf of the applicants. Information needed for servicing purposes is largely collected by the Servicing and Asset Management Office (Servicing Center) from borrowers and third parties associated with or working on behalf of the borrowers. The party collecting the information provides the respondent with the needed form(s) and/or non-form(s) along with submission instructions. While submission instructions may vary, the Agency utilizes secure electronic means of submission when possible (*e.g.,* eForms and password protected emails).

Description of Respondents: Individuals and Households.

Number of Respondents: 4,420.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,602.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–28238 Filed 12–27–22; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2022–0012]

Notice of Intent To Prepare an Environmental Impact Statement for the West Fork Battle Creek Watershed Plan, Carbon County, Wyoming

AGENCY: Natural Resources Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) Wyoming State Office, in coordination with the USDA Forest Service and the U.S. Army Corps of Engineers (USACE), announces its intent to prepare an EIS for the West Fork Battle Creek Watershed Plan in the proximity of Savery-Little Snake River in Wyoming. The proposed Watershed Plan includes construction of a dam and reservoir on the West Fork of Battle Creek to provide for rural agricultural water management. NRCS is requesting comments to identify significant issues, potential alternatives, information, and analyses relevant to the Proposed Action from all interested individuals, Federal and State Agencies, and Tribes.

DATES: We will consider comments that we receive by February 13, 2023. Comments received after the 45-day comment period will be considered to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for docket ID NRCS–2022–0012. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* Andi Neugebauer, Wyoming State Conservationist, Natural Resources Conservation Service, 100 E B St. #3, Casper, Wyoming 82601. In your comment, specify the docket ID NRCS–2022–0012.

All comments received will be posted without change and made publicly available on *www.regulation.gov.*

FOR FURTHER INFORMATION CONTACT: Andi Neugebauer; telephone: (307) 233–6750; email: *Andi.Neugebauer@usda.gov.*

Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

Project updates will be posted on the NRCS Public Notices website: *https://www.nrcs.usda.gov/wps/portal/nrcs/main/wy/newsroom/pnotice/* and on the Forest Service website for the Medicine Bow-Routt National Forests and Thunder Basin National Grassland (MBRTB): *https://www.fs.usda.gov/main/mbr/home.*

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary goal of the proposed dam and reservoir is to provide a late season supplemental water supply to serve approximately 19,000 acres of irrigated lands in the Little Snake River Basin in Wyoming and Colorado. Under existing climate conditions, the Little Snake River Basin above its confluence with Sand Creek experience irrigation water shortages of approximately 12,000 AF. The objective is to reduce the late season irrigation water and irrigation water shortages in dry years. The project may also mitigate future drought impacts to agriculture and natural resources resulting from climate change. In addition to the irrigation water supply, the proposed reservoir would also benefit fisheries, riparian and wetland wildlife habitats, and water-associated recreation.

Ecological objectives of the project include improvements to aquatic ecosystems and riparian habitats by supplementing stream flows during low-flow periods, and improvements to terrestrial habitat associated with irrigation-induced wetlands. Benefits are expected to accrue to these attributes to the confluence with the Yampa River including improvements to both cold water and warm water sensitive species.

Economic objectives of the project are to reduce late season irrigation water shortages resulting in increased pasture and hay production for regional ranching stability and to enhance habitats that support populations of wildlife and fisheries providing additional economic benefits to the region from hunting, fishing, and other recreational activities.

There are three agencies proposing actions supporting the West Fork Battle Creek Watershed Plan and dam and reservoir construction. Each agency's purpose and need are explained below.

NRCS

NRCS purpose and need for watershed planning and preparation of an EIS is to provide for rural agricultural water management. The Little Snake River Basin, above its confluence with Sand Creek, experiences an average irrigation water shortage of 12,000 acre-feet (AF). The primary purpose of the watershed plan is to increase water storage to improve late season water supply and reduce the irrigation water shortages in the Little Snake River Basin. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended (16 U.S.C. 1001–1009), and the Flood Control Act of 1944 (33 U.S.C. 702b–1). The watershed planning is being partially funded by the Wyoming Water Development Office (WWDO) under Wyoming Statute 41–2–112 and sponsored by the Savery-Little Snake River and Pothook Water Conservancy Districts.

Forest Service

The purpose of participation by the Forest Service in the project is to respond to a request for a land exchange by the Wyoming Office of State Lands and Investments (OSLI). The objective of the Forest Service land exchange program is to use land exchanges as a tool to implement National Forest System (NFS) land and resource management planning and direction, to optimize NFS land ownership patterns, to further resource protection and use, and to meet the present and future needs of the American people (Forest Service Manual (FSM) 5430.2). Basic authorities for the exchange of NFS land and interests in the land are in 7 CFR part 2.60 and FSM 1010. Specifically, the General Exchange Act of 1922 (16 U.S.C. 485 and 486) authorizes the exchange of land or timber that was reserved from the public domain for NFS purposes. Land exchange regulations are in 36 CFR part 254, subpart A, with further direction in FSM 5430. If the reservoir were constructed as proposed, the land exchange would be needed to eliminate the need for a special use permit for the reservoir and associated facilities and to provide for more effective and efficient management of the reservoir and surrounding lands. Pending further analysis, the proposed exchange may meet other guidelines specified in Appendix F of the 2003 Medicine Bow National Forest Revised Land and Resource Management Plan.

USACE

The purpose of participation by USACE in the project will be to respond to a section 404 standard individual permit application under the authority of The Clean Water Act to store approximately 10,000 AF for the purpose of providing late season irrigation water to the Little Snake River Basin, above its confluence with Sand Creek, and enhanced habitat benefits downstream. The overall project

purpose and need for USACE will be finalized after a section 404 permit application is submitted to USACE and will be subject to the 404(b)(1) guidelines (40 CFR 230).

The Sponsor intends to pursue authorization for construction of the West Fork Battle Creek Watershed project from the NRCS, under the Watershed and Flood Prevention Operations Program (Watershed Protection and Flood Prevention Act of 1954, as amended, Pub. L. 83–566). The Sponsor submitted a Sponsor Request for financial assistance through the NRCS's Public Law 83–566 Watershed and Flood Prevention Operations Program in July 2019 and secured funding in the amount of $1.25 million to complete a Watershed Planning Study National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321–4347) document for the proposed project. The WWDO has provided an additional $1.25 million for this effort.

The Sponsor, in coordination with the WWDO, has proposed to construct a 264-foot-high roller-compacted concrete (RCC) dam to store 10,000 AF of water with a surface area of 130 acres. The reservoir pool would contain three storage accounts: 6,500 AF of irrigation storage, 1,500 AF of storage to maintain a minimum bypass flow, and a 2,000-acre-foot conservation pool. The proposed reservoir would be constructed on the West Fork of Battle Creek just below the confluence of Haggerty Creek and Lost Creek approximately 20 miles east-northeast of Savery, Wyoming. The project would be located on private and public lands in the Sierra Madre Mountains within the Brush Creek-Hayden Ranger District of the Medicine Bow-Routt National Forests.

A proposed land exchange to construct and operate the proposed project would include selected parcels of the NFS lands within and adjacent to the West Fork Battle Creek Reservoir site on the Medicine Bow-Routt National Forests with deemed equivalent State lands. The proposed land exchange would include approximately 1,350 acres of Forest Service-managed lands within Medicine Bow-Routt National Forests and would include parts of Haggarty Creek, Lost Creek, and West Fork Battle Creek. Approximately 2,024 acres of state land inholdings located in the Medicine Bow-Routt National Forests have been proposed to be evaluated for the land exchange. The State lands deemed equivalent with the Forest Service-managed lands will be analyzed as part of the proposed project.

Preliminary Proposed Action and Alternatives

The EIS will examine the proposed action and alternative solutions to reduce late season irrigation water shortages in the Little Snake River Basin. Alternatives that may be considered for detailed analysis include:

Alternative 1—No Action: No watershed plan would be implemented, and no dam or reservoir would be constructed.

Alternative 2—Proposed Action: The proposed action will consist of the proposed dam and reservoir with a land exchange between the Forest Service and the State of Wyoming.

Alternative 3—Proposed Action: The proposed action may consist of the proposed dam and reservoir with a different configuration of parcels for the land exchange between the Forest Service and the State of Wyoming.

Alternative 4—Proposed Action: The proposed action may consist of the proposed dam and reservoir with a special use authorization from the Forest Service.

Alternative 5—Proposed Action: The proposed action may consist of alternate locations for a dam and reservoir with equivalent land use authorizations as described in Table 1.

Alternative 6—Proposed Action: The proposed action may consist of alternate means of achieving the watershed plan goals, such as water conservation projects and habitat improvement projects within the basin.

To inform development of these general alternatives, the Sponsor and WWDO have conducted studies within the Little Snake River Basin to determine irrigation shortages and supply conditions, as well as to identify potential alternative locations for reservoirs that would augment the irrigation water supply to meet downstream shortages. Potential locations were evaluated using criteria such as ability to meet user needs, access, multiple-use potential, geotechnical feasibility, landownership, resource constraints (cultural and natural resource concerns), ability to permit, and cost. Table 1 provides a summary of information for each potential location considered in these studies by the Sponsor and WWDO. Each location will be reviewed to determine if it should be carried forward for detailed analysis in the EIS.

TABLE 1—SUMMARY OF PRELIMINARY ALTERNATIVES

Alternative locations	Description
Big Gulch	This earthen dam site is located on State and private lands approximately 3 miles upstream of Savery Creek on Big Gulch, just downstream of Reader Flatts. This alternative could supply supplemental irrigation shortages on lower Savery Creek and the Little Snake River below the confluence with Savery Creek. Supply ditch capacity to the dam site is presently limited to 30 cubic feet per second. The reservoir would hold approximately 3,045 AF.
Lower Little Sandstone located on the Little Sandstone Creek.	This earthen dam site is located on Bureau of Land Management, private, and NFS lands approximately 0.7 mile upstream from the confluence with Savery Creek. This alternative could supply supplemental irrigation shortages on lower Savery Creek and the Little Snake River below the confluence with Savery Creek. The reservoir would have a size of approximately 9,204 AF.
Upper Little Sandstone	This earthen dam site is located on Forest Service land at the Little Sandstone Creek approximately 2.5 miles west of the Little Sandstone Campground. This reservoir could supply supplemental irrigation shortages on lower Savery Creek and the Little Snake River below the confluence with Savery Creek. This reservoir would have a size of approximately 13,027 AF.
West Fork Battle Creek at Haggarty Creek (Lower Haggarty).	This earthen alternative is similar to the Proposed Action, but, instead of an RCC dam, this alternative would be an earthen dam. This dam site is located on Forest Service and private lands at West Fork Battle Creek approximately 0.5 mile downstream of the confluence of Lost Creek and Haggarty Creek. This alternative could supply supplemental irrigation shortages on Battle Creek below the confluence with the West Fork and the Little Snake River below the confluence with Battle Creek. The reservoir would have a size of approximately 5,000 AF.

TABLE 1—SUMMARY OF PRELIMINARY ALTERNATIVES—Continued

Alternative locations	Description
Haggarty Creek Near Copperton (Upper Haggarty) Site A.	This dam site is located on Forest Service and private lands at Haggarty Creek approximately 0.6 mile downstream of the Highway 70 culvert for Haggarty Creek. This alternative could supply supplemental irrigation shortages on Battle Creek below the confluence with the West Fork and the Little Snake River below the confluence with Battle Creek. The reservoir would have a size of approximately 3,367 AF. Both RCC and earthen dam options were examined for this alternative.
Haggarty Creek Near Copperton (Upper Haggarty) Site B.	This dam site is located on Forest Service and private lands on Haggarty Creek an additional 0.4 mile downstream from Upper Haggarty Site A. This alternative could supply supplemental irrigation shortages on Battle Creek below the confluence with the West Fork and the Little Snake River below the confluence with Battle Creek. The reservoir would have a size of approximately 3,367 AF. Both RCC and earthen dam options were examined for this alternative.
Battle Lake	This earthen enlargement dam is located on private and USFS lands on the downhill side of the existing Battle Lake. This reservoir site has a limited drainage area resulting in a limited amount of water supply. Additionally, due to topography, a very limited amount of storage could be provided without the expansion becoming inefficient.
Lower Cottonwood Creek	This dam site is located on private and USFS lands on Cottonwood Creek approximately 2.6 miles upstream of the Wyoming-Colorado border. This alternative would require a diversion from the Roaring Fork to be feasible, and the Sheep Mountain Ditch would need to be considerably enlarged to convey adequate flows. This alternative could supply supplemental irrigation shortages on the Little Snake River below the confluence with Cottonwood Creek. The reservoir would have a size of approximately 2,347 AF.
Upper Cottonwood Creek	This earthen dam site is located on private and USFS lands on Cottonwood Creek approximately 1.2 miles downstream of the point at which the existing Sheep Mountain Supply Ditch empties into Cottonwood Creek. This alternative would require a diversion from the Roaring Fork to be feasible, and the Sheep Mountain Ditch would need to be considerably enlarged to convey adequate flows. This alternative could supply supplemental irrigation shortages on the Little Snake River below the confluence with Cottonwood Creek. The reservoir would have a size of approximately 5,813 AF.
Roaring Fork	This earthen dam site is located on Forest Service land on the Roaring Fork Little Snake River approximately 3.4 miles upstream of the confluence with the Little Snake River. This alternative could supply supplemental irrigation shortages on the Little Snake River below the confluence with the Roaring Fork and could supply the Hackmaster Ditch, which diverts water from the Roaring Fork and serves areas between it and the Little Snake River. The reservoir would have a size of approximately 3,419 AF.

Summary of Expected Impacts

The Proposed Action and alternatives may have significant local, regional, or national impacts on the environment. Preliminary issues for the project include changes to hydrology, changes to water quality within the reservoir and downstream from the elevated copper levels in Haggerty Creek, climate change impacts affecting agriculture, impacts to aquatic and terrestrial wildlife habitats, changes to fisheries and downstream threatened and endangered Colorado River fish species, impacts to cultural and Tribal resources, and economic outcomes associated with agricultural, recreational, tourism, and wildlife-related activities.

Anticipated Permits and Authorizations

• The following permits and other authorizations are anticipated to be required: *CWA Section 404 permit.* Implementation of the proposed federal action would require a Clean Water Act (CWA) Section 404 permit from the U.S. Army Corps of Engineers, who is a cooperating federal agency on the planning effort.

• *CWA Section 401 permit.* The project would also require water quality certification under Section 401 of the CWA and permitting under Section 402 of the CWA (National Pollutant Discharge Elimination Permit), both of which would be issued by the Wyoming Department of Environmental Quality, a cooperating state agency on the planning effort.

• *Permit To Construct or Modify a Dam.* The project will require authorization from the Wyoming State Engineer for construction of a dam. Wyoming Water Development Office is a cooperating state agency on the plan and is assisting in funding for the project.

• *Endangered Species Act (ESA) Consultation.* Consultation with the USFWS is being conducted as required by the Endangered Species Act of 1973. Anticipate permit for depletions from the Colorado River Basin.

• *Land Swap/OSLI Improvement authorization.* The project will require a separate USDA Forest Service special use permit for land use or an approved land swap between the State of Wyoming and USDA Forest Service.

Schedule of Decision-Making Process

There are three agencies with decisions to make related to the West Fork Battle Creek Watershed Plan and dam and reservoir construction. The Savery-Little Snake River Water Conservancy District and Pothook Water Conservancy District (collectively referred to as the Sponsor) intend to pursue authorization for implementation of the West Fork Battle Creek Watershed Plan from NRCS under the Watershed and Flood Prevention Operations Program. Due to the project's location, which would be partially on federal lands managed by the Forest Service, the OSLI has proposed a land exchange with the Forest Service. The project could require an individual permit from USACE under the provisions of section 404 of the Clean Water Act (33 U.S.C. 1344).

NRCS

NRCS may provide financial assistance to the Sponsor to implement the selected alternative identified in the West Fork Battle Creek Watershed Plan EIS.

Forest Service

The Forest Supervisor of MBRTB is the responsible official for the Forest Service's decision for the proposed land exchange. Once the NEPA analysis is complete, the Forest Supervisor will decide whether or not to proceed with the land exchange, the rationale for the decision, and any conditions that will be attached to the selected alternative including, but not limited to, design criteria, mitigation, and monitoring.

USACE

Based on the analysis presented in the West Fork Battle Creek Watershed Plan EIS and through evaluation of a section 404 permit application, USACE may authorize a section 404 individual permit for the purpose of constructing a dam and reservoir as components of the West Fork Battle Creek Watershed Plan and, if so, under what terms and conditions

Public Scoping Process

Public meetings will be held in Baggs and Saratoga, Wyoming, and in Craig, Colorado, to determine the scope of the analysis presented in the EIS. Meetings are scheduled to occur in January 2023 and will be held at selected public venues in each location. Exact meeting locations and times will be determined closer to dates of the events. Public notices will be placed in local newspapers and on the NRCS and Forest Service websites. Additionally, letters providing details on the public meetings and the scoping comment and objection processes will be sent to federal and state agencies, Tribes, local landowners, and interested parties.

NRCS, Forest Service, and USACE invite the participation of and consultation with agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft EIS. Comments received, including names and addresses of those who comment, will be considered part of the public record. Comments submitted anonymously will be accepted and considered; however, they will not be used to establish standing for the Forest Service objection process.

NRCS, Forest Service, and USACE will use the scoping process to help fulfill the public involvement process under section 106 of the National Historic Preservation Act (54 U.S.C. 306108), as provided for in 36 CFR 800.2(d)(3). Information about historic and cultural resources within the area potentially affected by the proposed action and alternatives will assist the NRCS, Forest Service, and USACE in identifying and evaluating impacts to such resources in the context of both NEPA and section 106 of the National Historic Preservation Act.

Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration. Federal, state, and local agencies, along with other stakeholders that may be interested or affected by the NRCS, Forest Service, or USACE decisions on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the NRCS to participate as a cooperating agency.

Identification of Potential Alternatives, Information, and Analysis

NRCS invites agencies, Tribes, and individuals who have special expertise, legal jurisdiction, or interest in the West Fork Battle Creek Watershed Plan and dam and reservoir construction to provide comments concerning the scope of the analysis and identification of potential alternatives, information, and analyses relevant to the Proposed Action.

Forest Service Objection Process

The Forest Service decision for the project (whether or not to proceed with the land exchange) will be subject to the Forest Service's project-level pre-decisional administrative review process in 36 CFR part 218, subparts A and B (referred to as the ''objection process''). Individuals and entities who submit timely, specific written comments regarding the proposed land exchange during any designated opportunity for public comment will have standing to file an objection. Designated opportunities for public comment include the initial scoping period described in this notice of intent as well as the 45-day comment period for the draft EIS. It is the responsibility of persons providing comments to submit them by the close of the established comment periods. Only those who submit timely and specific written comments will be eligible to file an objection. Names and contact information submitted with comments will become part of the public record, will be publicly available on regulations.gov, and may be released under the Freedom of Information Act.

Authorities

This document is published as required by section 102(2)(C) of NEPA, the Council on Environmental Quality regulations (40 CFR parts 1500–1508), NRCS regulations that implement NEPA in 7 CFR parts 622 and 650, Forest Service regulations that implement NEPA in 36 CFR part 220, FSM 1950, Forest Service Handbook (FSH) 1909.15, and USACE under the provisions of section 404 of the Clean Water Act. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended, (Pub. L. 83–566) and the Flood Control Act of 1944 (Pub. L. 78–534).

Federal Assistance Program

The titles and numbers of the Federal Assistance Programs in the Catalog of Federal Domestic Assistance to which this Notice of Funding Availability applies is 10.904 Watershed Protection and Flood Prevention. NRCS will coordinate the scoping process as provided in 36 CFR 800.2(d)(3) and 800.8 (54 U.S.C. 306108) to help fulfill the National Historic Preservation Act (NHPA), as amended review process.''

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and TTY) or (844) 433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the

letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

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

Andrea Neugebauer,

Acting Wyoming State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2022–28245 Filed 12–27–22; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Office of Partnerships and Public Engagement

Advisory Committee on Minority Farmers

AGENCY: Office of Partnerships and Public Engagement, USDA.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Office of Partnerships and Public Engagement (OPPE) is announcing a meeting of the Advisory Committee on Minority Farmers (ACMF). USDA Secretary Vilsack is committed to actions that enhance minority farmers' ability to produce and thrive as businesses through USDA's customer service enhancements, expanded outreach, technical assistance, and capacity building. To that end, the ACMF will likewise recommend action-oriented strategies for maximizing the participation of minority farmers by leveraging those programs that ensure a food secure nation and effectively steward our natural resources. These principals will usher in business growth and opportunity for those minority agricultural communities plagued with fragile economies in decline.

DATES: The ACMF meeting will begin on January 18–20, 2022, from 9:00 a.m.–5:00 p.m. Pacific Standard Time (PST). Time will be allotted at the end of each morning and afternoon for comments from those attending. Public participants may also view the committee proceedings and presentations via Zoom: *https://ems8.intellor.com/login/846392.* Meeting ID and passcode is not required. The call-in numbers and code for listening only access are:

US Toll Free: 888–251–2949
US Toll: 215–861–0694
Access Code: 2154 982#

All persons wishing to make comments *during* the in-person meeting must check-in each day at the registration table. If the number of registrants requesting to speak is greater than what can be reasonably accommodated during the scheduled open public hearing session timeframe, OPPE may conduct a lottery to determine the speakers for the scheduled public comment session.

Meeting Pre-Registration and Public Comments: The public is asked to pre-register for the meeting by January 17, 2023, at *https://ems8.intellor.com/?do=register&t=1&p=846389.* For pre-registrations, we request your name, organization or affiliation, and intent to give oral comments. Participants may also submit written comments for the committee's consideration via the pre-registration link (*https://ems8.intellor.com/?do=register&t=1&p=846389*). Written comments must be received by or before January 17, 2023.

Members of the public who sign up to give oral comments to the Committee will be allowed time according to the number of speakers scheduled for each morning and afternoon public comment period. Members joining virtually may also request permission to give oral comments and will be instructed by the conference moderator on when and how to make live comments. Please remember that the comments made during the meeting will be added to the committee record only. Direct engagement or exchanges with committee members is not permitted while the meeting is in session.

ADDRESSES: The meeting will be held at the University of California, at Davis' ARC Conference Center, 760 Orchard Road, Davis, CA 95616. Drivers are instructed to park in Lot 25. A searchable campus map may be accessed here: *https://campusmap.ucdavis.edu/.* Parking is available at nominal cost.

Accessibility: USDA is committed to ensuring that all persons are included in our programs and events. If you are a person with a disability and require reasonable accommodations to participate in this meeting, please contact Mr. Eston Williams at *Eston.Williams@usda.gov* or (202) 596–0226. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

Availability of Materials for the Meeting: Presentations to be delivered to the ACMF, including the final meeting agenda, and any updates regarding the meeting announced in this notice, can be found on the ACMF website at *https://www.usda.gov/partnerships/advisory-committee-on-minority-farmers.*

FOR FURTHER INFORMATION CONTACT: General information about the committee can also be found at *https://www.usda.gov/partnerships/advisory-committee-on-minority-farmers.* Any member of the public wishing to obtain information concerning this public meeting may contact Mr. Eston Williams, Designated Federal Officer (DFO) via email *Eston.Williams@usda.gov* or call (202) 596–0226.

SUPPLEMENTARY INFORMATION: The ACMF will be pivotal in its liaison role that both informs and advises the Secretary of actions that may be taken to support minority farming growth and assist them with challenges of today, as well as those they will face in coming years. During this public meeting, the ACMF will explore and consider challenges specific to minority rural farming communities, including but not limited to: (1) infrastructure and housing (*e.g.,* Rural Development); (2) building economically viable, ecologically sound, and climate-smart farming and ranching (*e.g.,* planning, building, and business expansion); (3) examining barriers to enhanced minority farmer and rancher participation in USDA programs, services and partnerships (*e.g.,* Climate-Smart Commodities Funding); (4) addressing barriers to capital access, land acquisition, debt management (*e.g.,* Farm Service Agency); (5) adverse economic impacts of farming and ranching risk management; and (6) examining barriers to broader participation in export markets.

From these topics, the ACMF will deliberate and form its next set of recommendations for the current term. The ACMF specifically seeks to engage and hear directly from a broad geographical cross-section of minority farmers on their experiences, pathways, and challenges as they contend with severe weather events or continued barriers of entry and economically sustainable farming. The USDA will also want to hear about personal experiences and encourage all to participate, including those organizations that support farmers from a large cross-section of farm type or size and ethnic diversity.

The Committee was established pursuant to section 14008 of the Food Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651,

2008 (7 U.S.C. 2279), to ensure that socially disadvantaged farmers have equal access to USDA programs. The Secretary selected a diverse group of members representing a broad spectrum of persons chosen to recommend solutions to the challenges of minority farmers and ranchers, generally. The members also advise the Secretary on implementation of section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 2501 Program); maximizing the participation of minority farmers and ranchers in USDA programs; and civil rights activities within the Department relative to participants in its programs.

Dated: December 21, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–28237 Filed 12–27–22; 8:45 am]

BILLING CODE 3412–88–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Requests for Meetings and Registrations for Events and Conferences

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 27, 2023.

ADDRESSES: Interested persons are invited to submit written comments to the Department Paperwork Reduction Act Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 or via the internet at *PRAcomments@doc.gov.* All comments received are part of the public record. Comments will generally be posted without change. Please reference OMB Control Number 0690–0030 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to S. Dumas, DOC PRA Clearance Officer, Office of Policy and Governance, 14th and Constitution Avenue NW, Room 6616, Washington, DC 20230 (202) 482–3306 or at *PRAcomments@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a new information collection.

This collection of information is needed to obtain information from the respondents who request meetings or appearances with Senior Officials or those who register to participate in DOC events, and conferences. The information is collected by the DOC employees who host the conferences and events, and those who manage calendars for Senior personnel. DOC is collecting common elements from interested respondents such as name, organization, address, country, phone number, email address, state, city or town, special accommodations requests and how the respondent learned of the event or conference. The information collection element may also include race, ethnicity, gender and veteran status, and other relevant information. The information is primarily used to assess attendance and assist DOC staff in preparations to serve individuals registering for online or in person events. If applicable, the information collection may be used to collect payment from the respondents and make hotel reservations and other special arrangements as necessary. Race, ethnicity, gender, and other demographic information obtained through registration is voluntary, and is used to monitor DOC's outreach and engagement of equity and support for underserved communities. This information is not used to evaluate any DOC program application and choosing not to provide this information will not affect the application process for any individual applying to a DOC program.

II. Method of Collection

Information on this form will be collected using a paper format or electronically and requires the victim's signature either by ink pen or CAC.

III. Data

OMB Control Number: 0690–XXXX.

Form Number(s): None.

Type of Review: Regular submission, new information collection.

Affected Public: Individuals, Business or other for-profit, non-for-profit institutions, Federal Government, State, Local, or Tribal Government.

Estimated Number of Respondents: 300,000.

Estimated Time per Response: 5 to 30 minutes.

Estimated Total Annual Burden Hours: 90,000.

Estimated Total Annual Cost to Public: nominal.

Respondent's Obligation: Voluntary.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–28260 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 27, 2023.

ADDRESSES: Interested persons are invited to submit written comments to the Department Paperwork Reduction Act Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov.* All comments received are part of the public record. Comments will generally be posted without change. Please reference OMB Control Number 0690–0030 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to S. Dumas, DOC PRA Clearance Officer, Office of Policy and Governance, 14th and Constitution Avenue NW, Room 6616, Washington, DC 20230 (202) 482–3306 or at *PRAcomments@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that the Department of Commerce (DOC) programs are effective and meet our customers' needs we use a generic clearance process to collect qualitative feedback on our service delivery. This collection of information is necessary to enable DOC to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between DOC and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

II. Method of Collection

The methods of collection include but are not limited to in-person surveys, telephone interviews or questionnaires, mail and email surveys, web-based products, focus groups, and comment cards.

III. Data

OMB Control Number: 0690–0030.
Form Number(s): None.
Type of Review: Regular submission (Extension and revision of a current information collection).
Affected Public: Individuals or Households, Businesses or for-profit organizations, State, Local or Tribal Government, etc.
Estimated Number of Respondents: 215,100.
Estimated Time per Response: 5 to 30 minutes for surveys; 1 to 2 hours for focus groups; 30 minutes to 1 hour for interviews.
Estimated Total Annual Burden Hours: 18,492.
Estimated Total Annual Cost to Public: $517,961.
Respondent's Obligation: Voluntary.
Frequency of Requests: One-time.
Legal Authority: 44 U.S.C. 3501 *et seq.*

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 22, 2022.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–28243 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–64–2022]

Foreign-Trade Zone (FTZ) 75—Phoenix, Arizona; Notification of Proposed Production Activity; TSMC Arizona Corporation (Semiconductor Wafers); Phoenix, Arizona

TSMC Arizona Corporation submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Phoenix, Arizona within Subzone 75O. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on December 13, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished product is semiconductor wafers (duty rate is duty-free).

The proposed foreign-status materials and components include: methane (liquid; gas); chlorine; hydrogen; helium; xenon; nitrogen; acids (hydrochloric; nitric; phosphoric; hydrofluoric also known as hydrogen fluoride); hydrogen chloride; acid based solutions (phosphoric; acetic; nitric); silicate reagent; hydrogen bromide; carbon dioxide; silica; carbon monoxide; dinitrogen monoxide also known as nitrous oxide; nitric oxide; sulfur dioxide; boron trichloride; dichlorosilane; silane; silicon tetrachloride; chlorine trifluoride; diiodosilane; nitrogen trifluoride; anhydrous ammonia; ammonia; potassium hydroxide; slurries (potassium hydroxide based; cerium hydroxide based; polyglycerol polymer based; acetic acid based; ammonium hydroxide based; amorphous silica based; cerium dioxide based; potassium hydroxide based; silica based; tetraethylammonium hydroxide based; silica and phosphoric acid based); sulfur hexafluoride gas; tungsten hexafluoride; titanium tetrachloride; carbonyl sulfide; solutions (copper sulphate; potassium chloride electrode filling; hydrocarbon deposition; N-methylethanolamine; potassium chloride based; methyl 2-hydroxyisobutyrate based photoresist; propylene glycol monomethyl ether acetate based photoresist; surfactant; triethanolamine based; 4-morpholine carbaldehyde based; ammonium fluoride based; cobalt based; ethylene glycol based; tetrahydrothiophene-1,1-dioxide based); hydrogen peroxide; disilane; n-octane; ethyne also known as acetylene; trifluoromethane; tetrafluoromethane also known as perfluromethane; hexafluoro-1,3-butadiene; octafluorocyclobutane; alcohols (isopropyl; tert-butyl); hexachlorodisilane; 2-heptanone; cyclohexanone; cyclopentanone; butyl acetate; propylene glycol monomethyl ether acetate; pentakis(dime thylamino)tantalum(V) powder; tetrakis(methylethylamino)zirconium; developer solutions (tetramethy lammonium hydroxide; isobutyl propionate based); bis(diethylamino)silane; hexamethyldisilazane photoresist; N,N-bis(1-methylethyl)silanamine; tetramethylsilane; triethylaluminum; trimethylaluminum; trimethylsilane; butyrolactone; 2-propanol, 1-methoxy-, 2-acetate based undercoat material; wafer cleaning solutions (butoxyethanol based; ethanolamine based; hydroxyethanediphosphonic acid based); mixtures (photoresist chemical; diborane and argon; diborane and hydrogen; fluorine and nitrogen; helium and nitrogen; helium based compressed gas; hydrogen and argon; hydrogen and helium; hydrogen and nitrogen; methane and argon; oxygen and helium; xenon and hydrogen); cleaning solvents (dimethyl sulfoxide based; tetramethy lammonium hydroxide based); propylene glycol monomethylether based solvents; semi-processed semiconductor silicon wafers (doped; raw; reclaimed); benzotriazole based cleaning solutions; anti-reflective photoresist chemical coatings; copper anode discs; and, sputtering targets (cobalt; copper; tantalum; titanium) (duty rate ranges from duty-free to 6.5%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is February 6, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: December 21, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–28219 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–63–2022]

Foreign-Trade Zone (FTZ) 9—Honolulu, Hawaii; Notification of Proposed Production Activity; Par Hawaii Refining, LLC (Renewable Fuels); Kapolei, Hawaii

Par Hawaii Refining, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Kapolei, Hawaii within Subzone 9A. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on December 14, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed finished product(s) and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished products include renewable diesel fuel, sustainable aviation fuel, renewable naphtha and carbon dioxide (duty rates—10.5 cents per barrel and 3.7%).

The proposed foreign-status materials and components are crude and refined soybean oil (duty rate 19.1%). The request indicates that the materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is February 6, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: December 21, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–28218 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–826]

Paper Clips From the People's Republic of China: Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on paper clips from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable December 28, 2022.

FOR FURTHER INFORMATION CONTACT: Caroline Carroll or Thomas Martin, 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) 482–4948 and (202) 482–3936 respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2022, Commerce published the notice of initiation of the fifth sunset review of the *Order,*[1] pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).[2] Commerce received notices of intent to participate from domestic interested parties [3] within the deadline specified in 19 CFR 351.218(d)(1)(i), after the date of publication of the *Initiation Notice.*[4] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic like product in the United States.

Commerce received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] We did not receive a substantive response from any other interested party in these proceedings.

On October 25, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The products covered by the *Order* are certain paper clips. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Order* were revoked.[8] A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 126.94 percent.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an 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

We are issuing and publishing this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: December 20, 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 *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margin of Dumping Likely to Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2022–28170 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–911]

Paper File Folders From India: Postponement of Preliminary Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable December 28, 2022.

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[1] *See Antidumping Duty Order: Certain Paper Clips from the People's Republic of China,* 59 FR 60606 (November 25, 1994) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 53727 (September 1, 2022).

[3] The domestic interested parties are ACCO Brands USA LLC (ACCO) and Victor Technology LLC (Victor Technology).

[4] *See* Victor Technology's Letter, ''Paper Clips from the People's Republic of China: Five-Year Review of Antidumping Duty Order (5th Sunset Review), Case No. A–570–826; Victor Technology, LLC's Notice of Intent to Participate,'' dated September 13, 2022; *see also* ACCO's Letter, ''Paper Clips from the People's Republic of China: Five-Year Review of Antidumping Duty Order (5th Review), Case No. A–570–826; ACCO Brands USA LLC's Notice of Intent to Participate,'' dated September 15, 2022.

[5] *See* Domestic Interested Parties' Letter, ''Paper Clips from the People's Republic of China: Five-Year Review of Antidumping Duty Order (5th Sunset Review), Case No. A–570–826; Substantive Response of Domestic Producers,'' dated October 3, 2022.

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on September 1, 2022,'' dated October 25, 2022.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Paper Clips from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] *Id.*

FOR FURTHER INFORMATION CONTACT: Thomas Martin, 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) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2022, the U.S. Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of paper file folders from India.[1] Currently, the preliminary determination is due no later than January 5, 2023.

Postponement of Preliminary Determination

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 reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny it.

On December 9, 2022, the Coalition of Domestic Folder Manufacturers (the petitioner) timely filed a request for Commerce to postpone the preliminary CVD determination so that Commerce may review all questionnaire responses and new factual information to permit a thorough investigation and the calculation of accurate subsidy rates.[2]

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, 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 determination to no later than the next business day after 130 days after the date on which this investigation was initiated, *i.e.,* March 13, 2023.[3] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination.

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: December 21, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–28274 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Paper File Folders from India: Initiation of Countervailing Duty Investigation,* 87 FR 67447 (November 8, 2022).

[2] *See* Petitioner's Letter, ''Paper File Folders from India—Petitioner's Request For Extension of Preliminary Determination Deadline,'' dated December 9, 2022. The petitioner is the Coalition of Domestic Folder Manufacturers, the members of which are Smead Manufacturing Company, Inc. and TOPS Products LLC.

[3] The extended date for the preliminary determination falls on March 11, 2023, which is a Saturday. Commerce's practice dictates that, when 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 Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, Preliminary Successor-in-Interest Determination, and Rescission of Review, in Part; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Zhejiang Fuerjia Wooden Co., Ltd. (Fuerjia) did not make sales of subject merchandise at less than normal value (NV), that certain companies had no shipments of subject merchandise during the period of review (POR) December 1, 2020, through November 30, 2021, that Arte Mundi Group Co., Ltd. (Arte Mundi Group) is the successor-in-interest to Arte Mundi (Shanghai) Aesthetic Home Furnishings Co., Ltd. (Arte Mundi Shanghai), and that Metropolitan Hardwood Floors, Inc. (Metropolitan) is part of the China-wide entity. Finally, we are rescinding the review with respect to certain companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 28, 2022.

FOR FURTHER INFORMATION CONTACT: Alexis Cherry or Max Goldman, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6478 or (202) 482–0224, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on multilayered wood flooring (MLWF) from the People's Republic of China (China).[1] The review covers 49 companies, including mandatory respondents Fuerjia and Metropolitan.

For events that occurred since the *Initiation Notice* and the analysis behind our preliminary results herein, *see* the Preliminary Decision Memorandum.[2] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.* A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Scope of the Order[3]

The product covered by the *Order* is MLWF from China. For a complete

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 6487 (February 4, 2022) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See Multilayered Wood Flooring from the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011), as amended in *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders,* 77 FR 5484 (February 3, 2012) (collectively, *Order*).

description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Partial Rescission of Review

On February 7, 2022, Zhejiang Yuhua Timber Co. Ltd. (Zhejiang Yuhua) and A-Timber Flooring Company Limited (A-Timber) withdrew their requests for review.[4] On April 13, 2022, the American Manufacturers of Multilayered Wood Flooring (the petitioner) withdrew its request for an administrative review with respect to Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Senmao),[5] and on April 14, 2022, Senmao withdrew its request for review of itself.[6] Finally, on April 25, 2022, Kingman Floors Co., Ltd. (Kingman Floors) withdrew its request for review of itself.[7] No other parties requested a review of these four companies. Accordingly, Commerce is rescinding the administrative review with respect to Zhejiang Yuhua, A-Timber, Kingman Floors, and Senmao.[8]

Jiashan HuiJiaLe Decoration Material Co., Ltd. (Jiashan HuiJiaLe) also withdrew its request for an administrative review of itself.[9] However, the petitioner also requested a review of Jiashan HuiJiaLe and did not withdraw its request.[10] Accordingly, we are not rescinding the administrative review with respect to Jiashan HuiJiaLe.

Preliminary Determination of No Shipments

Based on an analysis of information from U.S. Customs and Border Protection (CBP), no-shipment certifications, and other record information, we preliminarily determine that 34 companies had no shipments of subject merchandise during the POR.[11] Consistent with our practice in non-market economy (NME) cases, we are not rescinding this review with respect to these companies but, rather, we intend to complete the review and issue appropriate instructions to CBP based on the final results of the review.[12]

Separate Rates

We preliminarily determine that, in addition to Fuerjia, four companies not individually-examined are eligible for separate rates in this administrative review.[13] The Tariff Act of 1930, as amended (the Act), and Commerce's regulations do not address the establishment of a separate rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the rate for separate-rate respondents that are not individually examined in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually examined respondents, excluding dumping margins that are zero, *de minimis,* or based entirely on facts available. Where the dumping margins for individually examined respondents are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the estimated all others rate.

For the preliminary results of this review, Commerce has determined the estimated dumping margin for Fuerjia to be zero. Consistent with the guidance of section 735(c)(5)(B) of the Act, and for the reasons explained in the Preliminary Decision Memorandum, we are assigning this rate to the non-examined respondents which qualify for a separate rate in this review.

The China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[14] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, the entity is not under review, and the entity's rate, *i.e.,* 85.13 percent, is not subject to change.[15]

Commerce selected Metropolitan as one of two mandatory respondents in this administrative review.[16] Metropolitan then notified Commerce that it did not intend to participate in the review.[17] Because Metropolitan did not respond to the questionnaire, it has not established its eligibility for a separate rate despite submitting a timely separate rate certification.[18] Therefore, Commerce considers Metropolitan to be part of the China-wide entity. *See* the Preliminary Decision Memorandum for further discussion.

Aside from the companies for which we preliminarily find had no shipments and the companies for which the review is being rescinded, Commerce considers all other companies for which a review was requested and did not demonstrate separate rate eligibility to be part of the China-wide entity.[19] For the preliminary results of this review, we consider six companies, including Metropolitan, to be part of the China-wide entity.

Preliminary Results of Successor-in-Interest Analysis

Arte Mundi Group reported that during the POR, it changed its English name from Arte Mundi Shanghai to Arte Mundi Group.[20] Based on our analysis of the information on the record regarding any changes with respect to corporate structure, manufacturing facilities, customers, and suppliers, we

[4] *See* Zhejiang Yuhua and A-Timber's Letter, ''Withdrawal of Request for Administrative Review,'' dated February 7, 2022.

[5] *See* Petitioner's Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated April 13, 2022.

[6] *See* Senmao's Letter, ''Withdrawal of Request for Administrative Review,'' dated April 14, 2022.

[7] *See* Kingman Floor's Letter, ''Notice of Withdrawal of Request for 2020–2021 Administrative Review,'' dated April 25, 2022.

[8] *See* 19 CFR 351.213(d)(1).

[9] *See* Jiashan HuiJiaLe's Letter, ''Notice of Withdrawal of Request for 2020–2021 Administrative Review,'' dated March 4, 2022.

[10] *See* Petitioner's Letter, ''Request for Administrative Review,'' dated December 30, 2021.

[11] *See* Appendix II for a list of these companies.

[12] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) (*NME AD Assessment*).

[13] *See* Appendix II for a list of these companies.

[14] *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).

[15] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017,* 84 FR 38002 (August 5, 2019).

[16] *See* Memorandum, ''Second Respondent Selection,'' dated May 5, 2022.

[17] *See* Metropolitan's Letter, ''10th AD Administrative Review,'' dated May 24, 2022.

[18] *See* Metropolitan's Letter, ''Submission of Separate Rate Certification,'' dated March 4, 2022; *see also Initiation Notice* (''Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.'')

[19] *See Initiation Notice,* 87 FR at 6489 (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.''). Companies that are subject to this administrative review that are considered to be part of the China-wide entity are listed in Appendix II.

[20] *See* Arte Mundi Group's Letter, ''No Shipment Letter for Arte Mundy {*sic*} Group/Arte Mundi Shanghai/Scholar Home in the 10th Administrative Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China,'' dated March 7, 2022.

preliminarily determine that Arte Mundi Group is the successor-in-interest to Arte Mundi Shanghai and, as a result, should be accorded the same treatment previously accorded to Arte Mundi Shanghai for cash deposit purposes. *See* the Preliminary Decision Memorandum for further information. Should our final results of review remain the same as these preliminary results of review, effective the date of publication of the final results of review, we will instruct CBP to apply Arte Mundi Shanghai's cash deposit rate to Arte Mundi Group.

Methodology

We are conducting this administrative review in accordance with sections 751(a)(1)(B) of the Act and 19 CFR 351.213. We calculated export prices for Fuerjia in accordance with section 772(a) of the Act. Because China is an NME within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the POR December 1, 2020, through November 30, 2021:

Exporters	Weighted-average dumping margin (percent)
Zhejiang Fuerjia Wooden Co., Ltd.	0.00
Non-Selected Companies Under Review Receiving a Separate Rate [21]	0.00

Disclosure and Public Comment

We intend to disclose to interested parties the calculations performed for these preliminary results in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[22] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[23] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review 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. Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS [24] and must be served on interested parties.[25] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[26]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via Commerce's electric records system, ACCESS. An electronically-filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[27] Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[28] Parties should confirm by telephone the date and time of the hearing two days before the scheduled date.

Unless otherwise extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case and rebuttal briefs, within 120 days of publication of these preliminary results in the **Federal Register,** pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b)(1). Commerce intends to issue assessment instructions to CBP 35 days after the publication of the final results of this review. 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).

If Fuerjia's *ad valorem* weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total quantity of those sales, in accordance with 19 CFR 351.212(b)(1).[29] Commerce will also calculate (estimated) *ad valorem* importer-specific assessment rates with which to assess whether the per-unit assessment rate is *de minimis.* We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.*

For the respondents that were not selected for individual examination in this administrative review that qualified for a separate rate, the assessment rate will be the separate rate established in the final results of this administrative review.

If, in the final results, Fuerjia's weighted-average dumping margin continues to be zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[30] For entries that were not reported in the U.S. sales databases submitted by Fuerjia during this review, and for the companies that do not qualify for a separate rate, Commerce will instruct CBP to liquidate such entries at the China-wide rate (*i.e.,* 85.13 percent).[31] In addition, if in the final results we continue to find no shipments of subject merchandise for the 34 companies for which we preliminarily find no such shipments during the POR,[32] any suspended entries of subject merchandise associated with those companies will be liquidated at the China-wide rate.[33]

[21] *See* Appendix II.

[22] *See* 19 CFR 351.309(c).

[23] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'').

[24] *See generally* 19 CFR 351.303.

[25] *See* 19 CFR 351.303(f).

[26] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[27] *See* 19 CFR 351.310(c)

[28] *See* 19 CFR 351.310(d).

[29] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[30] *See* 19 CFR 351.106(c)(2).

[31] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017,* 84 FR 38002 (August 5, 2019).

[32] *See* Appendix II for a list of these companies.

[33] *See NME AD Assessment.*

For the companies for which the administrative review is rescinded, antidumping duties shall be assessed at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). We intend to issue appropriate assessment instructions to CBP with respect to the companies for which this administrative review is rescinded 35 days after the publication of the preliminary results in the **Federal Register**.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the companies that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is *de minimis,* then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters for which a review was not requested and that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 85.13 percent); and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing the preliminary results of this review in accordance with sections 751(a)(l) and 777(i)(l) of the Act, 19 CFR 351.213(d)(4), and 19 CFR 351.221(b)(4).

Dated: December 21, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Scope of the *Order*
V. Selection of Respondents
VI. Preliminary Determination of No Shipments
VII. Preliminary Successor-in-Interest Determination
VIII. Discussion of the Methodology
IX. Recommendation

Appendix II

No Shipments

Anhui Longhua Bamboo Product Co., Ltd.
Arte Mundi Group Co., Ltd. (successor-in-interest to Arte Mundi (Shanghai) Aesthetic Home Furnishings Co., Ltd.)
Benxi Flooring Factory (General Partnership)
Benxi Wood Company
Dalian Deerfu Wooden Product Co., Ltd.
Dalian Jiahong Wood Industry Co., Ltd.
Dalian Shengyu Science And Technology Development Co., Ltd.
Dongtai Fuan Universal Dynamics, LLC
Dun Hua Sen Tai Wood Co., Ltd.
Dunhua City Dexin Wood Industry Co., Ltd.
Dunhua City Hongyuan Wood Industry Co., Ltd.
Dunhua Shengda Wood Industry Co., Ltd.
HaiLin LinJing Wooden Products Co., Ltd.
Hunchun Xingjia Wooden Flooring Inc.
Huzhou Chenghang Wood Co., Ltd
Huzhou Sunergy World Trade Co., Ltd.
Jiangsu Keri Wood Co., Ltd.
Jiangsu Mingle Flooring Co., Ltd
Jiangsu Simba Flooring Co., Ltd.
Jiangsu Yuhui International Trade Co., Ltd.
Jiashan On-Line Lumber Co., Ltd.
Kingman Wood Industry Co., Ltd.
Linyi Anying Wood Co., Ltd.
Linyi Youyou Wood Co., Ltd.
Muchsee Wood (Chuzhou) Co., Ltd.
Pinge Timber Manufacturing (Zhejiang) Co., Ltd.
Power Dekor Group Co., Ltd.
Sino-Maple (Jiangsu) Co., Ltd.
Suzhou Dongda Wood Co., Ltd.
Tongxiang Jisheng Import and Export Co., Ltd.
Yekalon Industry Inc.
Zhejiang Longsen Lumbering Co., Ltd.
Zhejiang Shiyou Timber Co., Ltd.
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.

China-Wide Entity

Jiashan HuiJiaLe Decoration Material Co., Ltd.
Jiaxing Hengtong Wood Co., Ltd.
Lauzon Distinctive Hardwood Flooring, Inc.
Metropolitan Hardwood Floors, Inc.
Yihua Lifestyle Technology Co., Ltd. (successor-in-interest to Guangdong Yihua Timber Industry Co., Ltd.)
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.

Rescissions

A-Timber Flooring Company Limited
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.
Kingman Floors Co., Ltd.
Zhejiang Yuhua Timber Co. Ltd.

Non-Selected Companies Under Review Receiving a Separate Rate

Dalian Penghong Floor Products Co., Ltd./Dalian Shumaike Floor Manufacturing Co., Ltd.
Huzhou Fulinmen Imp. & Exp. Co., Ltd.
Jiangsu Guyu International Trading Co., Ltd.
Zhejiang Dadongwu Greenhome Wood Co., Ltd.

[FR Doc. 2022–28273 Filed 12–27–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–8807]

Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), December 1, 2020, through November 30, 2021. Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 28, 2022.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Luberda or Alice Maldonado, 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) 482–2185 or (202) 482–4682, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2022, based on timely requests for review, in accordance with

19 CFR 351.221(c)(1)(i), we initiated an administrative review on circular welded carbon-quality steel pipe (CWP) from the United Arab Emirates (UAE).[1] This review covers five producers/exporters of the subject merchandise.[2] Commerce selected Ajmal Steel Tubes & Pipes Ind. L.L.C./Ajmal Steel Tubes & Pipes Ind., L.L.C.-Branch-1 (collectively, Ajmal) [3] and Universal Tube and Plastic Industries, Ltd./THL Tube and Pipe Industries LLC/KHK Scaffolding and Framework LLC (collectively, Universal) for individual examination.[4]

On August 17, 2022, Commerce extended the deadline for the preliminary results of this administrative review until December 20, 2022.[5] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order [7]

The merchandise subject to the *Order* is welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter not more than nominal 16 inches (406.4 mm), regardless of wall thickness, surface finish, end finish, or industry specification, and generally known as standard pipe, fence pipe and tube, sprinkler pipe, or structural pipe (although subject product may also be referred to as mechanical tubing). The products subject to the *Order* are currently classifiable in Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5030, 7306.50.5050, and 7306.50.5070. Although the HTSUS subheadings are provided for convenience and for customs purposes, the written product description remains dispositive. 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)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://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.*

Rate for Non-Examined Companies

The Act and Commerce's regulations do not address the rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies that were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

Consistent with section 735(c)(5)(A) of the Act, we determined the weighted-average dumping margin for each of the non-selected companies by using the weighted-average dumping margins calculated for Ajmal and Universal in this administrative review.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following estimated weighted-average dumping margins exist for the period December 1, 2020, through November 30, 2021:

Exporter/producer	Weighted-average dumping margin (percent)
Ajmal Steel Tubes & Pipes Ind. L.L.C./Ajmal Steel Tubes & Pipes Ind. L.L.C.-Branch-1	4.94
Universal Tube and Plastic Industries, Ltd/THL Tube and Pipe Industries LLC/KHK Scaffolding and Framework LLC	2.61
Conares Metal Supply Limited	3.57
K.D. Industries Inc	3.57
TSI Metal Industries L.L.C	3.57

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 6487 (February 4, 2022).

[2] Although we initiated on both TSI Metal Industries L.L.C. (TSI Metal) and Tiger Steel Industries L.L.C. (Tiger Steel), as noted in the final results of the 2019–2020 administrative review, we found that TSI Metal is the successor in interest to Tiger Steel. *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2019–2020,* 87 FR 41111 (July 11, 2022).

[3] We collapsed Ajmal Steel Tubes and Pipes Ind. L.L.C. and Noble Steel Industries L.L.C. (Noble Steel) together in the final results of the 2016–2017 administrative review. *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 44845 (August 27, 2019) (*CWP from UAE 2016–2017 Final Results*). Additionally, in the final results of the 2019–2020 administrative review, we found that Ajmal Steel Tubes & Pipes Ind., L.L.C.-Branch-1 is the successor-in-interest to Noble Steel. *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2019–2020,* 87 FR 41111 (July 11, 2022).

[4] *See* Memorandum, ''Selection of Respondents for Individual Examination,'' dated March 18, 2022, at 2. Commerce previously determined that Universal is a single entity consisting of the following three producers/exporters of subject merchandise: Universal Tube and Plastic Industries, Ltd.; KHK Scaffolding and Framework LL; and Universal Tube and Pipe Industries LLC (UTP). *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 36882 (June 8, 2016), and accompanying Preliminary Decision Memorandum, unchanged in *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value,* 81 FR 75030 (October 28, 2016), and accompanying Issues and Decision Memorandum. Because there is no information on the record of this administrative review that would lead us to revisit this determination, we are continuing to treat these companies as part of a single entity for purposes of this administrative review. Additionally, we previously determined that THL Tube and Pipe Industries LLC is the successor-in-interest to UTP. *See CWP from UAE 2016–2017 Final Results.*

[5] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2020–2021 Antidumping Duty Administrative Review,'' dated August 17, 2022.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2020–2021 Administrative Review of the Antidumping Duty Order on Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 81 FR 91906 (December 19, 2016) (*Order*).

the date of publication of this notice.[8] Case briefs or other written comments may be submitted to Commerce no later than 30 days after the date of publication of this notice.[9] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[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 ACCESS.[12] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Acting Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after publication of this notice.[14] Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[15] Parties should confirm by telephone the date and time of the hearing two days before the scheduled date. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication date of this notice, unless otherwise extended.[16]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[17] If the weighted average dumping margin for Ajmal or Universal is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[18] Where the respondent did not report entered value, we will calculate the entered value in order to calculate the assessment rate. If the weighted-average dumping margin for the respondents listed above is zero or *de minimis* in the final results, or an importer-specific assessment rate is zero or *de minimis* in the final results, we will instruct CBP not to assess antidumping duties on any of their entries in accordance with the *Final Modification for Reviews.*[19]

For the companies that were not selected for individual review, we intend to assign an assessment rate based on the methodology described in the ''Rate for Non-Examined Companies'' section. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[20]

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[21]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the exporters listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review or previous segment, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently-completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.95 percent, the all-others rate established in the less-than-fair-value investigation.[22] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(c).

[10] *See 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* 19 CFR 351.303.

[13] *See Temporary Rule.*

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310(d).

[16] *See* section 751(a)(3)(A) of the Act.

[17] *See* 19 CFR 351.212(b).

[18] In these preliminary results, Commerce applied the assessment rate calculation adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[19] *Id.* at 8102.

[20] *See* section 751(a)(2)(C) of the Act.

[21] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[22] *See Order.*

Dated: December 20, 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. Companies Not Selected for Individual Examination
V. Application of Partial Adverse Facts Available
VI. Discussion of the Methodology
VII. Recommendation

[FR Doc. 2022–28171 Filed 12–27–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–812]

Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review; Deferred 2019–2020 Period and Concurrent 2020–2021 Period

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that circular welded carbon-quality steel pipe (CWP) from the Sultanate of Oman (Oman) was sold in the United States at less than normal value (NV) during the period of review (POR), December 1, 2019, through November 30, 2020, and the POR, December 1, 2020, through November 30, 2021. Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 28, 2022.

FOR FURTHER INFORMATION CONTACT: Samuel Glickstein or Dennis McClure, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5307 or (202) 482–5973, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act), Commerce is conducting an administrative review of the antidumping duty order on CWP from Oman.[1] On February 4, 2021, Commerce published the initiation of the 2019–2020 administrative review of the *Order* with respect to three companies, excluding Al Jazeera Steel Products Co. SAOG (Al Jazeera).[2] Pursuant to 19 CFR 351.213(c), Commerce received a request from Al Jazeera Steel Products Co. SAOG (Al Jazeera) to defer the 2019–2020 administrative review with respect to itself for one year.[3] Commerce did not receive any objections to the deferral within 15 days after the end of the December 2020 anniversary month. As such, we deferred the initiation of the administrative review for the 2019–2020 POR with respect to Al Jazeera to the month immediately following the next anniversary month.[4] On February 4, 2022, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published its initiation of an administrative review of the *Order* for the 2019–2020 POR with respect to Al Jazeera.[5] On the same day, Commerce also published its initiation of a review of the *Order* for the 2020–2021 POR covering four exporters/producers,[6] of which we selected Al Jazeera as the mandatory respondent.[7]

On August 17, 2022, we extended the deadline for the preliminary results of this review until December 21, 2022.[8] For a complete description of the events between the initiation of this review and these preliminary results, *see* the Preliminary Decision Memorandum.[9]

[1] *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 81 FR 91906 (December 19, 2016) (*Order*).

[2] These three companies are: Al Samna Metal Manufacturing & Trading Company LLC (Al Samna); Bollore Logistics (Oman) LLC (Bollore Logistics); and Transworld Shipping Trading & Logistics Services LLC (Transworld Shipping). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 8166 (February 4, 2021) (*February 2021 Initiation Notice*). On March 9, 2021, Commerce rescinded the administrative review for the 2019–2020 POR with respect to these companies. *See Circular Welded Carbon-Quality Steel Pipe from Oman: Rescission of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 13525 (March 9, 2021) (*CWP from Oman Rescission*).

[3] *Id.* at Footnote 12.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 6487 (February 4, 2022) (*February 2022 Initiation Notice*), at fn. 6.

[5] *See February 2022 Initiation Notice.*

[6] The four companies are: Al Jazeera; Al Samna; Bollore Logistics; and Transworld Shipping. *See February 2022 Initiation Notice.*

[7] *See* Memorandum, ''Respondent Selection,'' dated March 7, 2022.

[8] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated August 17, 2022.

[9] *See* Memorandum, ''Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; Deferred 2019–2020 Period and Concurrent 2020–2021 Period,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[10] *Id.* at ''Scope of the *Order*.''

Scope of the Order

The merchandise subject to the *Order* is CWP from Oman. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[10]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as 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 *https://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.*

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy less-than-fair-value (LTFV) investigation, for guidance when determining the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

For the 2020–2021 POR, we have preliminarily calculated a weighted-

average dumping margin for Al Jazeera that is not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce has preliminarily assigned to companies not individually examined for the 2020–2021 POR a margin of 2.37 percent, which is Al Jazeera's calculated weighted-average dumping margin for the 2020–2021 POR in this administrative review.

Preliminary Results

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist for the periods December 1, 2019, through November 30, 2020, and December 1, 2020, through November 30, 2021:

Exporter/producer	Weighted-average dumping margin for December 1, 2019 to November 30, 2020 POR (percent)	Weighted-average dumping margin for December 1, 2020 to November 30, 2021 POR (percent)
Al Jazeera Steel Products Co. SAOG	4.61	2.37
Al Samna Metal Manufacturing & Trading Company LLC [11]	Not Applicable	2.37
Bollore Logistics (Oman) LLC [12]	Not Applicable	2.37
Transworld Shipping Trading & Logistics Services LLC [13]	Not Applicable	2.37

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[14] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within seven days from the deadline date for the submission of case briefs.[15] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[16] Case and rebuttal briefs should be filed electronically via ACCESS. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[17]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[18] Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national, and (4) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[19]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, no later than 120 days after the publication of these preliminary results in the **Federal Register**, unless this deadline is otherwise extended.[20]

Assessment Rates

Upon completion of this administrative review, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries for the 2019–2020 POR and the 2020–2021 POR, at the applicable *ad valorem* assessments rates listed for the corresponding review period. If Al Jazeera's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce clarified its ''automatic assessment'' regulation on May 6, 2003.[21] This clarification applies to entries of subject merchandise during the 2019–2020 POR and the 2020–2021 POR produced by Al Jazeera for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For the companies which were not selected for individual examination in the 2020–2021 POR, we intend to assign an assessment rate based on the methodology described in the ''Rate for Non-Examined Companies'' section above.

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

[11] As noted above, on March 9, 2021, Commerce rescinded the administrative review for the 2019–2020 POR for this company. *See CWP from Oman Rescission,* 86 FR at 13525.

[12] *Id.*

[13] *Id.*

[14] *See* 19 CFR 351.309(c)(1)(ii).

[15] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'')

[16] *See* 19 CFR 351.309(c)(2) and (d)(2).

[17] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[18] *See* 19 CFR 351.310(c).

[19] *Id.*

[20] *See* section 751(a)(3)(A) of the Act; *see also* 19 CFR 351.213(h).

[21] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each company listed above will be equal to the weighted-average dumping margin established in the final results of this review for the 2020–2021 POR, except, if that rate is *de minimis,* then the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed in the final results of this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 7.36 percent that was established in the LTFV investigation.[22] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the 2019–2020 POR and the 2020–2021 POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

[22] *See Order,* 81 FR at 91908.

Dated: December 20, 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. Companies Not Selected For Individual Examination
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2022–28172 Filed 12–27–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the scope ruling applications listed below in the month of November 2022.

DATES: Applicable December 28, 2022.

FOR FURTHER INFORMATION CONTACT: Terri Monroe, 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) 482–1384.

Notice of Scope Ruling Applications: In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of November 2022. This notification includes, for each scope application: (1) identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.[1] This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at *https://access.trade.gov.*

Scope Ruling Applications

Ammonium Sulfate from the People's Republic of China (China) (A–570–049/C–570–050); Enriched ^{15}N ammonium sulfate;[2] produced in and exported from China; submitted by Cambridge Isotope Laboratories, Inc. (CIL); November 11, 2022; ACCESS scope segment ''SCO—Cambridge—Enriched N ammonium sulfate.''

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from China (A–570–979/C–570–980); T8700 eufyCam Security Solar Panel;[3] produced in and exported

[1] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) (''It is our expectation that the **Federal Register** list will include, where appropriate, for each scope application the following data: (1) identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.'')

[2] Enriched ^{15}N ammonium sulfate is a compound commonly used in laboratory research and quantitative proteomics. It is incorporated into metabolically active cells and small organisms or post-metabolically in peptides and proteins by enzymatic or chemical reactions. The 15N labels are used to monitor specific aspects of dynamic proteomes. The chemical formula for CIL's enriched Ammonium Sulfate is (15NH4)2SO4. The product's tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) is 2845.90.0000.

[3] Anker's T8700 eufyCam security solar panel is a discrete, weatherproof outdoor panel specifically manufactured for compatibility and use with eufy's outdoor home security camera system. The panel provides total maximum output of 2.6 Watts. The solar panel is encased in laminated material without stitching. The dimensions of the solar panel inclusive of the bezel are $7.31 \times 4.56 \times 1$ inches. The unit weighs approximately 0.69 pounds. The solar cells have visible parallel grid collector metallic wire lines every 1 mm across each solar panel. The unit has no glass cover. The unit

Continued

from China; submitted by Anker Innovations Limited (Anker); November 21, 2022; ACCESS scope segment ''SCO—Anker T8700 eufyCam Security SolarPanel.''

Hand Trucks and Certain Parts Thereof from China (A–570–891); Mobile Utility Fan; [4] produced in and exported from China; submitted by HKC–US, LLC (HKC); November 22, 2022; ACCESS scope segment ''HKC Mobile Utility Fan.''

Aluminum Extrusions from China (A–570–967/C–570–968); Heat Sink Manifold; [5] produced in and exported from China; submitted by Wagner Spray Tech Corporation (Wagner); November 22, 2022; ACCESS scope segment ''Wagner Heat Sink Manifold.''

Notification to Interested Parties

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application nor initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope inquiry will be deemed initiated the following day—day 31.[6] Commerce's practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.[7] Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the ''updated'' 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the ''updated'' 30th day.[8]

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at *https://access.trade.gov/help/Scope_Ruling_Guidance.pdf.* Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry and be added to the public service list for that segment of the proceeding must file an entry of appearance in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with 19 CFR 351.225(n) and Commerce's procedures.[9]

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: December 22, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–28246 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Statement of Financial Interests, Regional Fishery Management Councils

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 23, 2022 (87 FR 58064) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

does not have a built-in inverter. The unit is manufactured in China with solar cells that are manufactured in China. The product's tariff classification under the HTSUS is 8501.71.0000.

[4] The Mobile Utility Fan has wheels in order to maneuver the fan into a proper location to be used in connection with workshop/DIY/home projects. It also has ancillary features such as a light-emitting diode light, a tray, an electrical power strip, and a one-inch thick round bar that folds down three inches off the ground to hold lightweight tools and items and carry them to and from a job site. The fold down round bar does not have a toe plate and is not capable of sliding under a load for purposes of moving or lifting a load. It is manufactured using mainly steel parts. The product's tariff classification under the HTSUS is 8414.51.9090.

[5] The product is a heat sink manifold, which is a component part to Wagner's paint sprayers. The manifold controls the flow of paint in the sprayer and is a heat sink, drawing heat away from the motor and electronic components. The heat sink manifolds are produced using Chinese-origin Series 6 aluminum alloy that is extruded into blanks and then precision machined to custom dimensions, flatness, and quality to achieve the desired specifications for heat dissipation. The product's tariff classification under the HTSUS is 8424.90.9080, as parts of sprayers.

[6] In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

[7] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[8] This maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021).

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Statement of Financial Interests for Regional Fishery Management Councils.

OMB Control Number: 0648–0192.

Form Number(s): NOAA Form 88–195.

Type of Request: Regular (revision and extension of a current information collection).

Number of Respondents: 330.

Average Hours per Response: 45 minutes.

Total Annual Burden Hours: 248 hours.

Needs and Uses: The Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the establishment of eight Regional Fishery Management Councils to manage fisheries within regional jurisdictions. Section 302(j) of the Magnuson-Stevens Act requires that affected individuals, including Council members appointed by the Secretary of Commerce, Scientific and Statistical Committee (SSC) members appointed by a Council, and individuals nominated by the State Governor, Territorial Governor or Tribal Government for possible appointment as a Council member (50 CFR 600.235), must disclose their financial interest in any Council fishery. Financial interests include harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction. Information on financial interests must be disclosed on NOAA Form 88–195, Statement of Financial Interests, under OMB collection 0648–0192. The information collected is used to assess potential conflicts of interest and to make determinations about when recusals from Council voting decisions are necessary to avoid such conflicts. NOAA Fisheries and Council offices are required to maintain current Statement of Financial Interests forms on file that are publically available for transparency. The Statement of Financial Interests form is being revised at this time for consistency with the final rule to clarify guidance on council members' financial disclosures and voting recusals (50 CFR 600.235; as amended at 85 FR 56177, Sept. 11, 2020).

Affected Public: Individuals or households.

Frequency: Annual.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Act section 302(j) and 50 CFR 600.235.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0648–0192.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–28215 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC404]

Fisheries of the Exclusive Economic Zone off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Program

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of standard prices and fee percentage.

SUMMARY: NMFS publishes the individual fishing quota (IFQ) standard prices and fee percentage for cost recovery for the IFQ Program for the halibut and sablefish fisheries of the North Pacific (IFQ Program). The fee percentage for 2022 is 1.9 percent. This action is intended to provide holders of halibut and sablefish IFQ permits with the 2022 standard prices and fee percentage to calculate the required payment for IFQ cost recovery fees due by January 31, 2023.

DATES: The standard prices and fee percentages are valid on December 28, 2022.

FOR FURTHER INFORMATION CONTACT: Charmaine Weeks, Fee Coordinator, 907–586–7231.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the IFQ Program in the North Pacific. The IFQ Program is a limited access system authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act). Fishing under the IFQ Program began in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended to, among other purposes, require the Secretary of Commerce to collect a fee to recover the actual costs directly related to the management and enforcement of any individual quota program. This requirement was further amended in 2006 to include collection of the actual costs of data collection and to replace the reference to ''individual quota program'' with a more general reference to ''limited access privilege program'' at section 304(d)(2)(A) of the Magnuson-Stevens Act. Section 304(d)(2) of the Magnuson-Stevens Act also specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited.

On March 20, 2000, NMFS published regulations at § 679.45 to implement cost recovery for the IFQ Program (65 FR 14919, March 20, 2000). Under the regulations, an IFQ permit holder must pay a cost recovery fee for every pound of IFQ halibut and sablefish that is landed on their IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee for all IFQ halibut and sablefish landings on their permit(s). The IFQ permit holder is also responsible for submitting IFQ fee payments(s) to NMFS on or before January 31 of the year following the year in which the IFQ landings were made. The total dollar amount of the fee is determined by multiplying the NMFS published fee percentage by the ex-vessel value of all IFQ landings made on the permit(s) during the IFQ fishing year. As required by § 679.45(d)(1) and (d)(3)(i), NMFS publishes this notice of the fee percentage for the IFQ halibut and sablefish fisheries in the **Federal Register** during or prior to the last quarter of each year.

Standard Prices

The fee is based on the sum of all payments made to fishermen for the sale of the fish during the year. This includes any retro-payments (*e.g.,* bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: actual and standard. Actual ex-vessel value is the amount of all compensation,

monetary or non-monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. Standard ex-vessel value is the default value used to calculate the fee. IFQ permit holders have the option of using actual ex-vessel value if they can satisfactorily document it; otherwise, the standard ex-vessel value is used.

Section 679.45(b)(3)(iii) requires the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and IFQ sablefish landings, to calculate standard ex-vessel values. The standard prices are described in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the year. According to § 679.2, IFQ equivalent pound(s) means the weight amount, recorded in pounds, and calculated as round weight for sablefish and headed and gutted weight for halibut, for an IFQ landing. The weight of halibut in pounds landed as guided angler fish is converted to IFQ equivalent pound(s) as specified in 50 CFR 300.65(c)(5)(ii)(E). NMFS calculates the standard prices to closely reflect the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings by month and port or port-group. The standard prices for IFQ halibut and IFQ sablefish are listed in the tables that follow the next section. Data from ports are combined as necessary to protect confidentiality.

Fee Percentage

NMFS calculates the fee percentage each year according to the factors and methods described at § 679.45(d)(2). NMFS determines the fee percentage that applies to landings made in the previous year by dividing the total costs directly related to the management, data collection, and enforcement of the IFQ Program (management costs) during the previous year by the total standard ex-vessel value of halibut and sablefish IFQ landings made during the previous year (fishery value). NMFS captures the actual management costs associated with certain management, data collection, and enforcement functions through an established accounting system that allows staff to track labor, travel, contracts, rent, and procurement. NMFS calculates the fishery value as described under the section Standard Prices.

Using the fee percentage formula described above, NMFS determined that the percentage of management costs to fishery value for the 2022 calendar year is 1.9 percent of the standard ex-vessel value. An IFQ permit holder is to use the fee percentage of 1.9 percent to calculate their fee for IFQ equivalent pound(s) landed during the 2022 halibut and sablefish IFQ fishing season. An IFQ permit holder is responsible for submitting the 2022 IFQ fee payment to NMFS on or before January 31, 2023. Payment must be made in accordance with the payment methods set forth in § 679.45(a)(4)(iv). Payment can be made using credit card, debit card, or electronic check via the *pay.gov* program. NMFS does not accept credit card information by phone or in-person for fee payments.

The 2022 fee percentage of 1.9 percent is less than the 2021 fee percentage of 2.3 percent (86 FR 74071, December 29, 2021). Between 2021 and 2022 there was a net increase in management costs as well as a net increase in fishery value. Management costs increased by approximately 6 percent while fishery value increased by approximately 27 percent. The net increase in value was due to higher ex-vessel prices and landings for both halibut and sablefish IFQ fisheries.

TABLE 1—REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR THE 2022 IFQ SEASON [1]

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
CORDOVA	March 31	.....	.....
	April 30	.....	.....
	May 31	6.51	1.35
	June 30	3.74	.....
	July 31	2.86	.....
	August 31	4.40	.....
	September 30	4.14	2.73
	October 31	4.14	2.73
	November 30	4.14	2.73
	December 31	4.14	2.73
HOMER	March 31	8.06	.....
	April 30	8.21	1.50
	May 31	8.20	1.83
	June 30	7.77	2.32
	July 31	7.92	.....
	August 31	7.43	2.27
	September 30	6.47	2.36
	October 31	6.47	2.36
	November 30	6.47	2.36
	December 31	6.47	2.36
KETCHIKAN	March 31	.....	.....
	April 30	.....	.....
	May 31	7.98	.....
	June 30	7.91	2.45
	July 31	.....	.....
	August 31	.....	.....
	September 30	8.07	.....
	October 31	8.07	.....
	November 30	8.07	.....
	December 31	8.07	.....
KODIAK	March 31	.....	.....
	April 30	7.41	1.63
	May 31	7.73	1.91

TABLE 1—REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR THE 2022 IFQ SEASON [1]—Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
	June 30	7.67	2.38
	July 31	7.66	2.54
	August 31	7.36	2.46
	September 30	6.35	2.21
	October 31	6.35	2.21
	November 30	6.35	2.21
	December 31	6.35	2.21
PETERSBURG	March 31		
	April 30		
	May 31	7.79	
	June 30	7.80	
	July 31	7.62	
	August 31	7.27	
	September 30	7.20	
	October 31	7.20	
	November 30	7.20	
	December 31	7.20	
SEWARD	March 31		
	April 30	8.35	1.80
	May 31		
	June 30		
	July 31		
	August 31	7.60	
	September 30		
	October 31		
	November 30		
	December 31		
SITKA	March 31	7.48	1.97
	April 30	5.69	2.04
	May 31	7.41	1.90
	June 30	7.04	
	July 31		
	August 31		
	September 30		
	October 31		
	November 30		
	December 31		
BERING SEA [2]	March 31		
	April 30		1.77
	May 31	7.13	2.17
	June 30	7.15	1.46
	July 31	7.20	1.95
	August 31	7.24	2.02
	September 30	7.04	2.00
	October 31	7.04	2.00
	November 30	7.04	2.00
	December 31	7.04	2.00
CENTRAL GULF OF ALASKA [3]	March 31	7.66	1.87
	April 30	8.05	1.82
	May 31	7.97	1.87
	June 30	7.75	2.29
	July 31	7.41	2.44
	August 31	7.13	2.36
	September 30	6.35	2.31
	October 31	6.35	2.31
	November 30	6.35	2.31
	December 31	6.35	2.31
SOUTHEAST ALASKA [4]	March 31	7.67	2.15
	April 30	7.57	2.23
	May 31	7.96	2.22
	June 30	7.92	2.45
	July 31	7.64	2.68
	August 31	7.56	2.64
	September 30	6.95	2.72
	October 31	6.95	2.72
	November 30	6.95	2.72
	December 31	6.95	2.72
ALL–ALASKA [5]	March 31	7.67	2.10
	April 30	7.78	1.99

TABLE 1—REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR THE 2022 IFQ SEASON [1]—Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
	May 31	7.92	2.06
	June 30	7.73	2.01
	July 31	7.41	2.27
	August 31	7.24	2.34
	September 30	6.66	2.44
	October 31	6.66	2.44
	November 30	6.66	2.44
	December 31	6.66	2.44
ALL [5]	March 31	7.67	2.10
	April 30	7.89	2.01
	May 31	8.03	2.09
	June 30	7.84	2.01
	July 31	7.41	2.27
	August 31	7.27	2.34
	September 30	6.66	2.44
	October 31	6.66	2.44
	November 30	6.66	2.44
	December 31	6.66	2.44

[1] **Note:** In many instances, prices are not shown in order to comply with confidentiality guidelines when there are fewer than three processors operating in a location during a month. Additionally, landings at different harbors in the same general location (*e.g.,* ''Juneau, Douglas, and Auke Bay'') have been combined to report landings to the main port (*e.g.,* ''Juneau'').

[2] *Landing Locations Within Port Group—Bering Sea:* Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

[3] *Landing Locations Within Port Group—Central Gulf of Alaska:* Anchor Point, Anchorage, Alitak, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez, Whittier.

[4] *Landing Locations Within Port Group—Southeast Alaska:* Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

[5] *Landing Locations Within Port Group—All:* For Alaska: All landing locations included in 1, 2, and 3. For California: Eureka, Fort Bragg, Other California. For Oregon: Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. For Washington: Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Ranier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. For Canada: Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28261 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Mandatory Shrimp Vessel and Gear Characterization Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 30, 2022 (87 FR 59403) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Association.

Title: Mandatory Shrimp Vessel and Gear Characterization Survey.

OMB Control Number: 0648–0542.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 1,349.

Average Hours per Response: 30 minutes.

Total Annual Burden Hours: 674.5.

Needs and Uses: The mandatory vessel and gear characterization survey is a census data collection effort of all shrimp vessel owners or operators who possess a valid Federal Gulf commercial shrimp fishing permit. NMFS began collecting these survey data in 2006 under OMB Control No. 0648–0542 per the final rule implementing Amendment 13 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 13) (71 FR 56039, September 26, 2006).

NMFS is currently collecting census-level information on fishing vessel and gear characteristics in the Gulf of Mexico (Gulf) commercial shrimp fishery (Gulf shrimp fishery), which operates in the Gulf exclusive economic zone. NMFS uses this information to conduct analyses that improve fishery management decision-making and ensure that national goals, objectives, and requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*), National Environmental Policy Act, Regulatory Flexibility Act, Endangered Species Act, and Executive Order 12866 are met; and quantify achievement of the performance measures in the NMFS' Operating Plans. This information is vital in assessing the economic, social, and environmental effects of fishery management decisions and regulations on individual shrimp fishing enterprises, fishing communities, and

the Nation as a whole. Recordkeeping requirements for this information collection under the Magnuson-Stevens Act are codified at 50 CFR 622.51(a)(3).

Affected Public: Businesses or other for-profit organizations, individuals and households.

Frequency: Reporting occurs annually.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0648–0542.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–28223 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Atlantic Herring Amendment 5 Data Collection

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 30, 2022 (87 FR 59402) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Association (NOAA), Commerce.

Title: Atlantic Herring Amendment 5 Data Collection.

OMB Control Number: 0648–0674.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 622.

Average Hours per Response: For participants in the Atlantic herring fishery, 5 minutes for a pre-trip notification; 1 minute for a trip cancellation notification; 5 minutes for a call to request an IFM observer to access groundfish closed areas; 1 minute for a trip cancellation notification for groundfish closed areas; 5 minutes for the submission of a released catch affidavit; and 1 minute for the submission of species pounds to the observer.

For IFM service providers, 10 minutes for submission of a monitor deployment report; 20 minutes for the submission of an ASM availability report; 30 minutes for the submission of a safety refusal; 5 minutes for the submission of raw monitor data; 2 hours for a monitor debriefing; 30 minutes for the submission of other reports; 1 hour for the submission of biological samples; 10 hours for the submission of a new service provider application; 10 hours for an applicant response to a service provider denial; 30 minutes to request monitor training; 8 hours to rebut removal from the list of approved IFM service providers; 10 minutes to process request for an ASM; 5 minutes to notify unavailability of ASMs; 10 minutes to process request for an IFM observer in groundfish closed area; 5 minutes to notify unavailability of IFM observers; 5 minutes for the submission of monitor contact list updates; 5 minutes for the submission of monitor availability updates; 30 minutes for submission of service provider materials; and 30 minutes for the submission of service provide contracts.

Total Annual Burden Hours: 1,848.

Needs and Uses: This request is for an extension of a currently approved collection associated with the Atlantic herring fishery. National Marine Fisheries Service (NMFS) Greater Atlantic Region manages these fisheries in the Exclusive Economic Zone (EEZ) of the Northeastern United States through the Atlantic Herring Fishery Management Plan (FMP). The New England Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations implementing the FMP are specified at 50 CFR part 648 and the recordkeeping and reporting requirements at § 648.11 form the basis for this collection of information.

In 2014, NMFS implemented Amendment 5 to the Atlantic Herring FMP to improve the collection of real-time and accurate catch information for the Atlantic herring fishery; enhance the monitoring and sampling of catch at-sea; and address bycatch issues, in particular bycatch of river herrings and shads, through responsible management.

In 2020, NMFS implemented the New England Industry Funded Monitoring (IFM) Omnibus Amendment to increase monitoring in certain FMPs, above levels required by the Standardized Bycatch Reporting Methodology (SBRM), to assess the amount and type of catch and to reduce variability around catch estimates. This amendment created a structure by which industry funding would be used in conjunction with available federal funding to pay for additional monitoring to meet FMP-specific coverage targets and required IFM in the Atlantic herring fishery.

We request the continued collection of the following information to improve monitoring and the collection of catch information in the Atlantic herring fishery:

- Observer notification requirement for permitted herring vessels to facilitate SBRM and IFM coverage;
- Requirement for vessel captains to submit a Released Catch Affidavit form documenting the discarding of unsampled catch;
- A requirement that Category A and B Atlantic herring permit holders pay for vessel at-sea monitoring costs, estimated to be up to $710 per sea day, on trips selected for IFM coverage (50% coverage target);
- The option for Category A and B Atlantic herring permit holders that fish with midwater trawl gear to obtain an IFM observer allowing the vessel to fish in groundfish closed areas and pay for the vessel's at-sea monitoring costs, estimated to be up to $818 per sea day; and
- Requirements for IFM monitor service providers to submit reports to NMFS on behalf of Category A or B Atlantic herring permitted vessels or for meeting service provider responsibilities for service provider approval and to facilitate accurate catch monitoring.

Affected Public: Business or other for-profit organizations.

Frequency: As-needed.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq,* Section 303).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0648–0674.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–28214 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Communications Supply Chain Risk Information Partnership Supplemental Information Gathering

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed and continuing information collections, which will help us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 27, 2023.

ADDRESSES: Interested persons are invited to submit written comments by email to Kathryn Basinsky, Telecommunications Policy Specialist, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230 or by email at *CSRIP@ntia.gov.* Please reference ''C–SCRIP Supplemental Information Gathering'' in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Kathryn Basinsky, Telecommunications Policy Specialist, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, via email at *CSRIP@ntia.gov,* or via telephone at (202) 482–1880.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Secure and Trusted Communications Networks Act of 2019 (STCNA), Public Law 112–96, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. 1601–1609), tasked NTIA with establishing a program to share information regarding supply chain security risks with trusted providers of advanced communications service and trusted suppliers of communications equipment or services. Furthermore, STCNA directed NTIA to conduct regular briefings and events and engage with trusted providers of advanced communications service and trusted suppliers of communications equipment or services, particularly small businesses or those that primarily serve rural areas.

NTIA engages in several activities to satisfy the statutory obligations assigned by STCNA, including hosting a public-facing C–SCRIP website to disseminate information about the program as well as public, open-source, unclassified supply chain alerts and information, and training opportunities. The agency also distributes a bi-monthly newsletter for those who subscribe via the C–SCRIP website and conducts webinars and briefings on a variety of cybersecurity and supply chain security topics.

To tailor its engagement and more effectively and efficiently disseminate information, NTIA is seeking to collect additional biographical information from those signing up for its newsletter. Specifically, NTIA would like to collect a subscriber's name, title, employer, location (state and country), and email address. This information will enable NTIA staff to better understand the demographics of its constituents. As a result, NTIA will be able to create and distribute cybersecurity and supply chain risk information that will be more useful to its constituents and to attend events in locations where its core audience is also likely to be able to attend.

II. Method of Collection

Under this proposed effort, NTIA will collect data electronically via webform on the C–SCRIP website.

III. Data

OMB Control Number: 0660–XXXX.

Form Number(s): None.

Type of Review: New information collection.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; State, local, or Tribal government; Federal Government; or any other member of the public who wishes to receive the C–SCRIP newsletter.

Estimated Number of Respondents: 300.

Estimated Time per Response: 10 minutes or less.

Estimated Total Annual Burden Hours: 1,500.

Estimated Total Annual Cost to Public: $2,379.

Respondent's Obligation: Voluntary.

Legal Authority: The Secure and Trusted Communications Networks Act of 2019 (STCNA), Public Law 112–96, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. 1601–1609).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–28216 Filed 12–27–22; 8:45 am]

BILLING CODE 3510–60–P

COUNCIL ON ENVIRONMENTAL QUALITY

Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Non-Federal Lands Permitting Task Force

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Request for nominations.

SUMMARY: As required by the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act, the Council on Environmental Quality (CEQ) is seeking additional member nominations from a diverse range of qualified candidates to serve on the ''Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Non-Federal Lands Permitting Task Force'' (Non-Federal Task Force). Vacancies are anticipated to be filled by February 17, 2023.

DATES: CEQ must receive nominations by January 27, 2023.

ADDRESSES: You may submit nominations, identified by ''CEQ CCUS Non-Federal Lands Permitting Task Force,'' by email to *ccus.taskforce@ceq.eop.gov.*

Instructions: All nominations must include a resume; a short biography providing an adequate description of the nominee's qualifications (including information that will enable CEQ to make a determination as to whether the nominee meets the membership requirements of the Non-Federal Task Force); and contact information for the nominee. Interested candidates may self-nominate.

FOR FURTHER INFORMATION CONTACT: Caroline M. Gignoux, Attorney-Advisor, 730 Jackson Place NW, Washington, DC 20503, (202) 395–5750 or *ccus.taskforce@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION: The USE IT Act, Div. S, sec. 102 (d)(2)(D), Public Law 116–260, 134 Stat. 1182, directs the establishment of no less than two regionally based task forces to: (1) identify challenges and successes that permitting authorities, project developers, and operators face to permit CCUS projects in an efficient, orderly, and responsible manner; and (2) provide recommendations to improve the performance of the permitting process and regional coordination for the purpose of promoting the efficient, orderly, and responsible development of CCUS projects and carbon dioxide pipelines. The regulatory authorities and permitting frameworks differ on Federal lands and the Outer Continental Shelf, and non-Federal lands; therefore, one task force will address permitting and other challenges for CCUS projects on Federal lands and the Outer Continental Shelf, and the other task force will address permitting and other challenges for CCUS projects on non-Federal lands.

On July 28, 2022, CEQ published two notices in the **Federal Register** requesting nominations for membership on the task forces. 87 FR 45304; 87 FR 45306.

The purpose of this notice is to request additional nominations for membership on the Non-Federal Task Force, one of the two task forces that will be established under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, and its implementing regulations at 41 CFR parts 101–6 and 102–3. A separate **Federal Register** notice seeking additional member nominations for the Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Federal Lands and Outer Continental Shelf Permitting Task Force has been issued simultaneously with this notice.

Members will be selected by the Council on Environmental Quality (CEQ) Chair pursuant to the USE IT Act. As required by FACA, the Non-Federal Task Force membership will be fairly balanced in terms of the points of view represented and the functions to be performed by the Non-Federal Task Force. Members of the Non-Federal Task Force will serve without compensation. However, each member may be reimbursed for authorized travel and per diem expenses incurred while attending Non-Federal Task Force meetings in accordance with Federal Travel Regulations. The Non-Federal Task Force shall meet not less than twice each year. To the maximum extent practicable, all task forces established under this provision of the USE IT Act shall meet collectively not less than once each year.

Responsibilities of the Non-Federal Task Force

As provided by the USE IT Act, the duties of the Non-Federal Task Force will be to:

- Inventory existing or potential Federal and state approaches to facilitate reviews associated with the deployment of CCUS projects and carbon dioxide pipelines, including best practices that avoid duplicative reviews to the extent permitted by law; engage stakeholders early in the permitting process; and make the permitting process efficient, orderly, and responsible;
- Develop common models for state-level carbon dioxide pipeline regulation and oversight guidelines that can be shared with states in the geographical area covered by the Non-Federal Task Force;
- Provide technical assistance to states in implementing regulatory requirements and models developed by the Non-Federal Task Force;
- Inventory current or emerging activities that transform captured carbon dioxide into a product of commercial value, or as an input to products of commercial value;
- Identify any priority carbon dioxide pipelines needed to enable efficient, orderly, and responsible development of CCUS projects at increased scale;
- Identify gaps in the current Federal and state regulatory framework and in existing data for the deployment of CCUS projects and carbon dioxide pipelines;
- Identify Federal and state financing mechanisms available to project developers; and
- Develop recommendations for relevant Federal agencies on how to develop and research technologies that can capture carbon dioxide; and would be able to be deployed within the region covered by the Non-Federal Task Force including any projects that have received technical or financial assistance for research under section 103(g)(6) of the Clean Air Act (42 U.S.C. 7403(g)).

Vacancies To Fill

The Non-Federal Task Force must include no less than one representative in each of the following categories as specified in the USE IT Act. Div. S, sec. 102 (d)(2)(D)(ii)(II), Public Law 116–260, 134 Stat.1182. Nominations are sought to fill at least one position in each category:

- Any state that requests participation in the geographical area covered by the Non-Federal Task Force;
- Developers or operators of CCUS projects or carbon dioxide pipelines;

• Nongovernmental membership organizations, the primary mission of which concerns protection of the environment;

The USE IT Act also requires one expert in each of the following fields:

• Health and environmental effects, including exposure evaluation; and

• Pipeline safety.

In addition, members may also include not less than one representative in each of the following categories at the request of a Tribal or local government:

• A local government in the geographical area covered by the Non-Federal Task Force; and

• A Tribal government in the geographical area covered by the Non-Federal Task Force.

To ensure that recommendations of the Non-Federal Task Force have considered the needs of diverse groups served by the Federal Government, opportunities will be sought to increase diversity, equity, inclusion, and accessibility for the membership of the Non-Federal Task Force. Please note that federally registered lobbyists serving in an ''individual capacity'' are ineligible for appointment or reappointment.

In selecting members, CEQ will consider technical expertise, coverage of broad stakeholder perspectives, diversity, and the duties of the Non-Federal Task Force as outlined in the USE IT Act. CEQ will use the following criteria to evaluate nominees:

• Background and experiences that help members contribute to the diversity of perspectives on the Non-Federal Task Force;

• Experience working for a state, Tribal, or local government on regulatory and permitting issues associated with CCUS projects and CO2 pipelines;

• CCUS and pipeline project development experience, or expertise and experience in closely related fields from a project developer, private sector perspective;

• Experience working for environmental nongovernmental organizations;

• Experience working on environmental justice issues at the national, state, or local level;

• Expertise in health and environmental effects of carbon dioxide, including exposure evaluation;

• Expertise in Federal and state financing mechanisms available to project developers;

• Expertise in the regulation, siting, and safety of carbon dioxide pipelines;

• Experience or expertise in emerging activities to transform CO2 into a product of commercial value;

• Demonstrated experience working on environmental, public health and climate change issues;

• Experience and/or responsibilities associated with Federal and state regulations and permitting requirements associated with CCUS projects and carbon dioxide pipelines, including but not limited to experience obtaining and/or issuing permits/rights of way/leases and knowledge regarding state legal requirements, processes, timeframes, costs, barriers, public engagement requirements, state environmental requirements as well as opportunities to improve/enhance all of the above;

• Executive management-level experience;

• Excellent interpersonal, oral and written communication and consensus-building skills; and

• Ability to volunteer time to attend meetings and to contribute to the duties assigned to the Non-Federal Task Force.

Taking into account the nominations CEQ received in response to its notices of July 28, 2022, CEQ is particularly interested in additional nominations for members who represent a local government in the geographical area covered by the Non-Federal Task Force; members who represent a Tribal government in the geographical area covered by the Non-Federal Task Force; members who are experts in pipeline safety; and members who have experience working on environmental justice issues at the national, state, or local level.

Dated: December 21, 2022.

Amy B. Coyle,

Deputy General Counsel.

[FR Doc. 2022–28156 Filed 12–27–22; 8:45 am]

BILLING CODE 3325–F3–P

COUNCIL ON ENVIRONMENTAL QUALITY

Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Federal Lands and Outer Continental Shelf Permitting Task Force

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Request for nominations.

SUMMARY: As required by the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act, the Council on Environmental Quality (CEQ) is seeking additional member nominations from a diverse range of qualified candidates to serve on the ''Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Federal Lands and Outer Continental Shelf Permitting Task Force'' (Federal and OCS Task Force). Vacancies are anticipated to be filled by February 17, 2023.

DATES: CEQ must receive nominations by January 27, 2023.

ADDRESSES: You may submit nominations, identified by ''CEQ CCUS Federal Lands and OCS Permitting Task Force,'' by email to *ccus.taskforce@ceq.eop.gov.*

Instructions: All nominations must include a resume; a short biography providing an adequate description of the nominee's qualifications (including information that will enable CEQ to make a determination as to whether the nominee meets the membership requirements of the Federal and OCS Task Force); and contact information for the nominee. Interested candidates may self-nominate.

FOR FURTHER INFORMATION CONTACT: Caroline M. Gignoux, Attorney-Advisor, 730 Jackson Place NW, Washington, DC 20503, (202) 395–5750 or *ccus.taskforce@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION: The USE IT Act, Div. S, sec. 102 (d)(2)(D), Public Law 116–260, 134 Stat. 1182, directs the establishment of no less than two regionally based task forces to: (1) identify challenges and successes that permitting authorities, project developers, and operators face to permit CCUS projects in an efficient, orderly, and responsible manner; and (2) provide recommendations to improve the performance of the permitting process and regional coordination for the purpose of promoting the efficient, orderly, and responsible development of CCUS projects and carbon dioxide pipelines. The regulatory authorities and permitting frameworks differ on Federal lands and the Outer Continental Shelf, and non-Federal lands; therefore, one task force will address permitting and other challenges for CCUS projects on Federal lands and the Outer Continental Shelf, and the other task force will address permitting and other challenges for CCUS projects on non-Federal lands.

On July 28, 2022, CEQ published two notices in the **Federal Register** requesting nominations for membership on the task forces. 87 FR 45304; 87 FR 45306.

The purpose of this notice is to request additional nominations for membership on the Federal and OCS Task Force, one of the two task forces that will be established under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, and its implementing regulations at 41 CFR parts 101–6 and 102–3. A separate **Federal Register** notice seeking additional member nominations for the

Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Non-Federal Lands Permitting Task Force has been issued simultaneously with this notice.

Members will be selected by the Council on Environmental Quality (CEQ) Chair pursuant to the USE IT Act. As required by FACA, the Federal and OCS Task Force membership will be fairly balanced in terms of the points of view represented and the functions to be performed by the Federal and OCS Task Force. Members of the Federal and OCS Task Force will serve without compensation. However, each member may be reimbursed for authorized travel and per diem expenses incurred while attending Federal and OCS Task Force meetings in accordance with Federal Travel Regulations. The Federal and OCS Task Force shall meet not less than twice each year. To the maximum extent practicable, all task forces established under this provision of the USE IT Act shall meet collectively not less than once each year.

Responsibilities of the Federal and OCS Task Force

As provided by the USE IT Act, the duties of the Federal and OCS Task Force will be to:

- Inventory existing or potential Federal and state approaches to facilitate reviews associated with the deployment of CCUS projects and carbon dioxide pipelines, including best practices that avoid duplicative reviews to the extent permitted by law; engage stakeholders early in the permitting process; and make the permitting process efficient, orderly, and responsible;
- Develop common models for state-level carbon dioxide pipeline regulation and oversight guidelines that can be shared with states in the geographical area covered by the Federal and OCS Task Force;
- Provide technical assistance to states in implementing regulatory requirements and models developed by the Federal and OCS Task Force;
- Inventory current or emerging activities that transform captured carbon dioxide into a product of commercial value, or as an input to products of commercial value;
- Identify any priority carbon dioxide pipelines needed to enable efficient, orderly, and responsible development of CCUS projects at increased scale;
- Identify gaps in the current Federal and state regulatory framework and in existing data for the deployment of CCUS projects and carbon dioxide pipelines;
- Identify Federal and state financing mechanisms available to project developers; and
- Develop recommendations for relevant Federal agencies on how to develop and research technologies that can capture carbon dioxide and would be able to be deployed within the region covered by the Federal and OCS Task Force including any projects that have received technical or financial assistance for research under section 103(g)(6) of the Clean Air Act (42 U.S.C. 7403(g)).

Vacancies To Fill

The Federal and OCS Task Force must include no less than one representative in each of the following categories as specified in the USE IT Act. Div. S, sec. 102 (d)(2)(D)(ii)(II), Public Law 116–260, 134 Stat.1182. Nominations are sought to fill at least one position in each category:

- Any state that requests participation in the geographical area covered by the Federal and OCS Task Force;
- Developers or operators of CCUS projects or carbon dioxide pipelines;
- Nongovernmental membership organizations, the primary mission of which concerns protection of the environment;

The USE IT Act also requires one expert in each of the following fields:

- Health and environmental effects, including exposure evaluation; and
- Pipeline safety.

In addition, members may also include not less than one representative in each of the following categories at the request of a Tribal or local government:

- A local government in the geographical area covered by the Federal and OCS Task Force; and
- A Tribal government in the geographical area covered by the Federal and OCS Task Force.

To ensure that recommendations of the Federal and OCS Task Force have considered the needs of diverse groups served by the Federal Government, opportunities will be sought to increase diversity, equity, inclusion, and accessibility for the membership of the Federal and OCS Task Force. Please note that federally registered lobbyists serving in an ''individual capacity'' are ineligible for appointment or reappointment.

In selecting members, CEQ will consider technical expertise, coverage of broad stakeholder perspectives, diversity, and the duties of the Federal and OCS Task Force as outlined in the USE IT Act. CEQ will use the following criteria to evaluate nominees:

- Background and experiences that help members contribute to the diversity of perspectives on the Federal and OCS Task Force;
- Experience working for a state, Tribal, or local government on regulatory and permitting issues associated with CCUS projects and CO_2 pipelines;
- CCUS and pipeline project development experience, or expertise and experience in closely related fields from a project developer, private sector perspective;
- Experience working for environmental nongovernmental organizations;
- Experience working on environmental justice issues at the national, state, or local level;
- Expertise in health and environmental effects of carbon dioxide, including exposure evaluation;
- Expertise in Federal and state financing mechanisms available to project developers;
- Expertise in the regulation, siting, and safety of carbon dioxide pipelines;
- Experience or expertise in emerging activities to transform CO_2 into a product of commercial value;
- Demonstrated experience working on environmental, public health and climate change issues;
- Experience and/or responsibilities associated with Federal and state regulations and permitting requirements associated with CCUS projects and carbon dioxide pipelines, including but not limited to experience obtaining and/or issuing permits/rights of way/leases and knowledge regarding state legal requirements, processes, timeframes, costs, barriers, public engagement requirements, state environmental requirements as well as opportunities to improve/enhance all of the above;
- Executive management-level experience;
- Excellent interpersonal, oral and written communication and consensus-building skills; and
- Ability to volunteer time to attend meetings and to contribute to the duties assigned to the Federal and OCS Task Force.

Taking into account the nominations CEQ received in response to its notices of July 28, 2022, CEQ is particularly interested in additional nominations for members who represent a local government in the geographical area covered by the Federal and OCS Task Force; members who represent a Tribal government in the geographical area covered by the Federal and OCS Task Force; members who are experts in pipeline safety; and members who have experience working on environmental justice issues at the national, state, or local level.

Dated: December 21, 2022.

Amy B. Coyle,

Deputy General Counsel.

[FR Doc. 2022–28157 Filed 12–27–22; 8:45 am]

BILLING CODE 3325–F3–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0131]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Form for Maintenance of Effort Waiver Requests

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 27, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Todd Stephenson, 202–205–1645.

SUPPLEMENTARY INFORMATION: The Department 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: Form for Maintenance of Effort Waiver Requests.

OMB Control Number: 1810–0693.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 1,600.

Abstract: Section 8521(a) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) provides that a local educational agency (LEA) may receive funds under Title I, Part A and other ESEA ''covered programs'' for any fiscal year only if the State educational agency (SEA) finds that either the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. This provision is the maintenance of effort (MOE) requirements for LEAs under the ESEA. If an LEA fails to meet the MOE requirement, under section 8521(b) of the ESEA, the SEA must reduce the amount of funds allocated under the programs covered by the MOE requirement in any fiscal year in the exact proportion by which the LEA fails to maintain effort by falling below 90 percent of either the combined fiscal effort per student or aggregate expenditures, if the LEA has also failed to maintain effort for 1 or more of the 5 immediately preceding fiscal years. In reducing an LEA's allocation because it failed to meet the MOE requirement, the SEA uses the measure most favorable to the LEA. Section 8521(c) gives the U.S. Department of Education (ED) the authority to waive the ESEA's MOE requirement for an LEA if it would be equitable to grant the waiver due to an exceptional or uncontrollable circumstance such as a natural disaster or a change in the organizational structure of the LEA or a precipitous decline in the LEA's financial resources. If an MOE waiver is granted, the reduction required by section 8521(b) does not occur for that year. A request for a waiver of the MOE requirement is discretionary. Only an LEA that has failed to maintain effort and that believes its failure justifies a waiver would request one. To review an MOE waiver request, ED relies primarily on expenditure, revenue, and other data relevant to an LEA's request provided by the SEA. To assist an SEA with submitting this information, ED developed an MOE waiver form as part of the 2009 Title I, Part A Waiver Guidance, which covered a range of waivers that ED invited at that time. The purpose of this request is to renew approval for the MOE waiver form. This collection includes burden at the SEA level.

Dated: December 22, 2022.

Kun 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. 2022–28265 Filed 12–27–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The information collection request, State Energy Program (SEP), was previously approved on August 31, 2020, under OMB Control Number 1910–5126 and its current expiration date is August 31, 2023. This ICR will include SEP Annual Appropriations and Infrastructure Investment and Jobs Act (IIJA). This ICR makes updates to the SEP reporting metrics to ensure the requested information can be shared on an annual basis with Congress.

DATES: Comments regarding this proposed information collection must be received on or before January 27, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881–8585.

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.

Greg Davoren by email to the following address: *Greg.davoren@ee.doe.gov* with the subject line ''State Energy Program (OMB NO. 1910–5126)'' included in the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Greg Davoren, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0121 or by email or phone at *greg.davoren@ee.doe.gov,* (202) 287–1706.

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–5126;

(2) *Information Collection Request Titled:* ''State Energy Program (SEP)'';

(3) *Type of Review:* Extension of a Currently Approved Collection;

(4) *Purpose:* To collect information on the status of grantee activities related to SEP Annual Appropriations and IIJA-total activities funded through with grant funds; expenditures; and results, to ensure that program funds are being used appropriately, effectively and expeditiously. *SEP Annual Appropriations:* On March 15, 2022, the President signed the Consolidated Appropriations Act of 2021, which appropriated $56,500,000 to the SEP for formula grants allocation. As noted in SEPN 22–01, SEP Grantees will be required to report metrics related to the expenditure of these funds. *Infrastructure Investments and Jobs Act (IIJA):* In addition to the reporting documents for the SEP's annual appropriations, this collection also includes reporting for the $790 million delivered by IIJA. IIJA was passed by Congress on November 6, 2021 ''to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.'' The State Energy Program is listed as an IIJA recipient under Title 1: Grid Infrastructure and Resiliency within Division D—Energy;

(5) *Annual Estimated Number of Respondents:* 56;

(6) *Annual Estimated Number of Total Responses:* 1,288;

(7) *Annual Estimated Number of Burden Hours:* 25,088;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $1,187,164.16.

Statutory Authority: Title 42, chapter 77, subchapter III, part B of the United States Code (U.S.C.), (42 U.S.C. 6321 *et seq.*). All grant awards made under this program shall comply with applicable laws including, but not limited to, the SEP statutory authority (42 U.S.C. 6321 *et seq.*), 10 CFR part 420, and 2 CFR part 200 as amended by 2 CFR part 910.

Signing Authority

This document of the Department of Energy was signed on November 22, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 22, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–28230 Filed 12–27–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5944–000]

Moretown Hydroelectric, LLC; Notice of Authorization for Continued Project Operation

The license for the Moretown No.8 Hydroelectric Project No. 5944 was issued for a period ending November 30, 2022.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 5944 is issued to the Moretown Hydroelectric, LLC for a period effective December 1, 2022, through November 30, 2023, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Moretown Hydroelectric, LLC is authorized to continue operation of the Moretown No.8 Hydroelectric Project under the terms and conditions of the

prior license until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

Dated: December 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28256 Filed 12–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2362–044]

Allete, Inc.; Notice of Waiver Period for Water Quality Certification Application

On December 19, 2022, Allete, Inc. submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the Minnesota Pollution Control Agency (Minnesota PCA), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 5.23(b) of the Commission's regulations,[1] we hereby notify the Minnesota PCA of the following:

Date of Receipt of the Certification Request: December 14, 2022

Reasonable Period of Time to Act on the Certification Request: One year (December 14, 2023)

If the Minnesota PCA fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: December 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28252 Filed 12–27–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 5.23(b).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL23–12–000]

Basin Electric Power Cooperative; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 19, 2022, the Commission issued an order in Docket No. EL23–12–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Basin Electric Power Cooperative's revised proposed 2023 Rate Schedule A is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful and to establish a refund effective date.[1] *Basin Electric Power Cooperative,* 181 FERC ¶ 61,241 (2022).

The refund effective date in Docket No. EL23–12–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL23–12–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[1] The section 206 investigation will extend to any affiliate of Basin Electric Power Cooperative with market-based rate authorization.

Dated: December 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28257 Filed 12–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–664–000]

NTUA Generation-Utah, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of NTUA Generation-Utah, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 10, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal**

Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: December 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28251 Filed 12–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15249–001]

Lewis Ridge Pumped Storage, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 15249–001.

c. *Dated Filed:* October 21, 2022.

d. *Submitted By:* Lewis Ridge Pumped Storage, LLC.

e. *Name of Project:* Lewis Ridge Pumped Storage Project.

f. *Location:* On Tom Fork near the communities of Blackmont, Tejay, Balkan, and Callaway, in Bell County, Kentucky. The project would not occupy any federal lands.

g. *Filed Pursuant to:* 18 CFR 5.5 of the Commission's regulations.

h. *Applicant Contact:* Sandy Slayton, Vice President, Lewis Ridge Pumped Storage, LLC, 830 NE Holladay Street, Portland, Oregon 97232; Phone: (206) 919–3976, Email: *sandy@ryedevelopment.com.*

i. *FERC Contact:* Michael Spencer at (202) 502–6093 or *michael.spencer@ferc.gov.*

j. Lewis Ridge Pumped Storage, LLC. (Lewıs Rıdge) filed its request to use the Traditional Licensing Process on October 21, 2022. Lewıs Rıdge provided public notice of its request on October 19, 2022. In a letter dated December 21, 2022, the Director of the Division of Hydropower Licensing approved Lewıs Rıdge's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Kentucky State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Lewis Ridge as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Lewis Ridge filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. Register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: December 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28249 Filed 12–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2361–056]

Allete, Inc.; Notice of Waiver Period for Water Quality Certification Application

On December 19, 2022, Allete, Inc. submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the Minnesota Pollution Control Agency (Minnesota PCA), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 5.23(b) of the Commission's regulations, [1] we hereby notify the Minnesota PCA of the following:

Date of Receipt of the Certification Request: December 14, 2022

Reasonable Period of Time To Act on the Certification Request: One year (December 14, 2023)

If the Minnesota PCA fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: December 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28254 Filed 12–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2570–034]

Eagle Creek Racine Hydro, LLC; Notice of Waiver Period for Water Quality Certification Application

On December 21, 2022, Eagle Creek Racine Hydro, LLC submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the Ohio Environmental Protection Agency (Ohio EPA), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 5.23(b) of the Commission's regulations,[1] we hereby notify the Ohio EPA of the following:

Date of Receipt of the Certification Request: December 20, 2022

[1] 18 CFR 5.23(b).

[1] 18 CFR 5.23(b).

Reasonable Period of Time To Act on the Certification Request: One year (December 20, 2023)

If the Ohio EPA fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: December 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28250 Filed 12–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–38–000.

Applicants: Rodeo Ranch Energy Storage, LLC.

Description: Rodeo Ranch Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/21/22.

Accession Number: 20221221–5053.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: EG23–39–000.

Applicants: Hecate Energy Albany 2 LLC.

Description: Hecate Energy Albany 2 LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/21/22.

Accession Number: 20221221–5092.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: EG23–40–000.

Applicants: Hecate Energy Albany 1 LLC.

Description: Hecate Energy Albany 1 LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/21/22.

Accession Number: 20221221–5097.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: EG23–41–000.

Applicants: GRP TE Lessee, LLC.

Description: GRP TE Lessee, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/21/22.

Accession Number: 20221221–5139.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: EG23–42–000.

Applicants: Kapolei Energy Storage I, LLC.

Description: Kapolei Energy Storage I, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/21/22.

Accession Number: 20221221–5144.

Comment Date: 5 p.m. ET 1/11/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–681–004.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Refund Report: Market Based Rate Refund Report to be effective N/A.

Filed Date: 12/21/22.

Accession Number: 20221221–5148.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER20–1090–001.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits additional Revisions to its Formula Rate Template for South Dakota.

Filed Date: 11/16/22.

Accession Number: 20221116–5055.

Comment Date: 5 p.m. ET 1/4/23.

Docket Numbers: ER20–2039–002.

Applicants: GridLiance High Plains LLC.

Description: Compliance filing: GHP ER20–2039 Order 864 Supplemental Compliance Filing to be effective 1/27/2020.

Filed Date: 12/21/22.

Accession Number: 20221221–5206.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER20–2043–001.

Applicants: GridLiance High Plains LLC.

Description: Compliance filing: GHP ER20–2043 Order 864 Supplemental Compliance Filing to be effective 1/27/2020.

Filed Date: 12/21/22.

Accession Number: 20221221–5209.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER20–2045–001.

Applicants: GridLiance High Plains LLC.

Description: Compliance filing: GHPs ER20–2045 Order No. 864 Supplemental Compliance Filing to be effective 1/27/2020.

Filed Date: 12/21/22.

Accession Number: 20221221–5219.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER22–2314–002.

Applicants: Langdon Renewables, LLC.

Description: Tariff Amendment: Amended and Restated Common Facilities Agreement (ER22–2314–) to be effective 9/7/2022.

Filed Date: 12/21/22.

Accession Number: 20221221–5086.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–188–001.

Applicants: Southwestern Electric Power Company.

Description: Tariff Amendment: SWEPCO–GSEC–LHEC Stephen Cruz Delivery Point Agreement—Amend Pending to be effective 10/7/2022.

Filed Date: 12/21/22.

Accession Number: 20221221–5202.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–321–001.

Applicants: Consolidated Edison Company of New York, Inc.

Description: Tariff Amendment: Amendment 12–21–2022 of BQDM filing#2 w Correct Code to be effective 11/1/2022.

Filed Date: 12/21/22.

Accession Number: 20221221–5082.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–334–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 1875R5 Kansas Electric Power Cooperative, Inc. NITSA and NOA to be effective 1/1/2023.

Filed Date: 12/21/22.

Accession Number: 20221221–5017.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–681–000.

Applicants: The Narragansett Electric Company, New England Power Company.

Description: Tariff Amendment: The Narragansett Electric Company submits tariff filing per 35.15: Notice of Cancellation FERC Tariff DB ID 138 SAs Under ISO–NE OATT Sched 21–NEP to be effective 12/31/9998.

Filed Date: 12/20/22.

Accession Number: 20221220–5239.

Comment Date: 5 p.m. ET 1/10/23.

Docket Numbers: ER23–682–000.

Applicants: ISO New England Inc.

Description: ISO New England submits Informational Filing of Contract with its External Market Monitor, Potomac Economics, Ltd., for the years 2023 through 2025.

Filed Date: 12/15/22.

Accession Number: 20221215–5232.

Comment Date: 5 p.m. ET 1/5/23.

Docket Numbers: ER23–683–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Necessary Studies Agreement, SA No. 6742 Queue No. AF1–006 to be effective 11/21/2022.

Filed Date: 12/21/22.

Accession Number: 20221221–5074.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–684–000.

Applicants: Southern California Edison Company.

Description: Tariff Amendment: Termination of ARES Nevada UFA TOT728AFS/Q1064 (SA208) to be effective 2/20/2023.

Filed Date: 12/21/22.
Accession Number: 20221221–5078.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–685–000.
Applicants: Campo Verde Solar, LLC.
Description: Initial rate filing: Filing of Mandrapa Shared Facilities Agreement and Request for Waivers to be effective 12/22/2022.
Filed Date: 12/21/22.
Accession Number: 20221221–5106.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–686–000.
Applicants: BP Energy Holding Company LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 12/22/2022.
Filed Date: 12/21/22.
Accession Number: 20221221–5113.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–688–000.
Applicants: BP Energy Retail Company California LLC.
Description: § 205(d) Rate Filing: Notice of Succession and Category Status Filing to be effective 12/22/2022.
Filed Date: 12/21/22.
Accession Number: 20221221–5115.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–689–000.
Applicants: BP Energy Retail Company LLC.
Description: § 205(d) Rate Filing: Notice of Succession and Category Status Filing to be effective 12/22/2022.
Filed Date: 12/21/22.
Accession Number: 20221221–5116.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–690–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc submits its informational filing for qualification in the Forward Capacity Market under 2026–2027 Capacity Commitment Period.
Filed Date: 12/21/22.
Accession Number: 20221221–5121.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–691–000.
Applicants: Hecate Energy Albany 1 LLC.
Description: Baseline eTariff Filing: Hecate Energy Albany 1 LLC MBR Tariff to be effective 2/4/2023.
Filed Date: 12/21/22.
Accession Number: 20221221–5125.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–692–000.
Applicants: Hecate Energy Albany 2 LLC.
Description: Baseline eTariff Filing: Hecate Energy Albany 2 LLC MBR Tariff to be effective 2/4/2023.
Filed Date: 12/21/22.
Accession Number: 20221221–5127.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–693–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Service Agreement FERC No. 901 to be effective 11/22/2022.
Filed Date: 12/21/22.
Accession Number: 20221221–5142.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–694–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 3350; Queue No. X1–097 to be effective 6/19/2012.
Filed Date: 12/21/22.
Accession Number: 20221221–5151.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–695–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6727; Queue No. NQ176 to be effective 11/21/2022.
Filed Date: 12/21/22.
Accession Number: 20221221–5154.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–696–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6717; Queue No. NQ182 to be effective 11/21/2022.
Filed Date: 12/21/22.
Accession Number: 20221221–5159.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–697–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6721; Queue No. NQ184 to be effective 11/21/2022.
Filed Date: 12/21/22.
Accession Number: 20221221–5162.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–698–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6724; Queue No. NQ186 to be effective 11/21/2022.
Filed Date: 12/21/22.
Accession Number: 20221221–5192.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–699–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: PSCO ADIT Table 66 Update to be effective 1/1/2021.
Filed Date: 12/21/22.
Accession Number: 20221221–5189.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–700–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 337 to be effective 9/27/2022.
Filed Date: 12/21/22.
Accession Number: 20221221–5186.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–701–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Service Agreement FERC No. 822 to be effective 11/29/2022.
Filed Date: 12/21/22.
Accession Number: 20221221–5201.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–702–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 45 to be effective 2/21/2023.
Filed Date: 12/21/22.
Accession Number: 20221221–5220.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–703–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Compliance filing: Amendment to Order No. 864 Compliance Filing to be effective 1/27/2020.
Filed Date: 12/21/22.
Accession Number: 20221221–5238.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–704–000.
Applicants: PPL Electric Utilities Corporation.
Description: PPL Electric Utilities Corporation submits Notice of Termination of Agreements.
Filed Date: 12/21/22.
Accession Number: 20221221–5280.
Comment Date: 5 p.m. ET 1/11/23.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF23–311–000.
Applicants: Bloom Energy Corporation.
Description: Form 556 of Bloom Energy Corporation [Kaiser San Marcos].
Filed Date: 12/14/22.
Accession Number: 20221214–5250.
Comment Date: 5 p.m. ET 1/4/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's

Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28255 Filed 12–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ23–3–000]

City of Pasadena, California; Notice of Filing

Take notice that on December 12, 2022, City of Pasadena, California submits tariff filing: City of Pasadena 2023 Transmission Revenue Balancing Account Adjustment, to be effective January 1, 2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5 p.m. Eastern Time on January 2, 2023.

Dated: December 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28253 Filed 12–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP23–27–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: Southern Natural Gas Company, L.L.C. submits Abbreviated Application for Abandonment of the Transportation Agreement with Texaco, Inc.

Filed Date: 12/19/22.

Accession Number: 20221219–5246.

Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: RP22–1031–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: Motion Filing: Motion Tariff Records into Effect RP22–1031–000 to be effective 1/1/2023.

Filed Date: 12/20/22.

Accession Number: 20221220–5204.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: RP23–296–000.

Applicants: Carolina Gas Transmission, LLC.

Description: Compliance filing: CGT—2022 Interruptible Revenue Sharing Report to be effective N/A.

Filed Date: 12/20/22.

Accession Number: 20221220–5037.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: RP23–297–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2022–12–20 Negotiated Rate Agreement Amendment to be effective 12/21/2022.

Filed Date: 12/20/22.

Accession Number: 20221220–5196.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: RP23–298–000.

Applicants: Great Basin Gas Transmission Company.

Description: § 4(d) Rate Filing: New Baseline Tariff—First Revised Version No. 1 to be effective 1/23/2023.

Filed Date: 12/21/22.

Accession Number: 20221221–5000.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: RP23–299–000.

Applicants: NGO Transmission, Inc.

Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 1/1/2023.

Filed Date: 12/21/22.

Accession Number: 20221221–5005.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: RP23–300–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) Rate Filing: Clean Up Filing Dec 2022 to be effective 2/1/2023.

Filed Date: 12/21/22.

Accession Number: 20221221–5007.

Comment Date: 5 p.m. ET 1/2/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP22–1031–002.

Applicants: Transwestern Pipeline Company, LLC.

Description: Compliance filing: File and Motion Revised and Cancelled Tariff Records RP22–1031–000 to be effective 1/1/2023.

Filed Date: 12/20/22.

Accession Number: 20221220–5207.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: RP23–166–000.

Applicants: Gulf Run Transmission, LLC.

Description: Report Filing: Notification CP20–68–000, et al. Actual In-Service Date 12/16/2022 to be effective N/A.

Filed Date: 12/19/22.

Accession Number: 20221219–5174.
Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: RP23–191–000.
Applicants: Enable Gas Transmission, LLC.
Description: Report Filing: Notification CP20–68–000, et al. Actual In-Service Date 12/16/2022 to be effective N/A.
Filed Date: 12/19/22.
Accession Number: 20221219–5179.
Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: RP23–191–001.
Applicants: Enable Gas Transmission, LLC.
Description: Compliance filing: Supplemental Actual In-Service Date for CP20–68, et al 12–16–22 to be effective 12/16/2022.
Filed Date: 12/20/22.
Accession Number: 20221220–5105.
Comment Date: 5 p.m. ET 1/2/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28248 Filed 12–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–666–000]

Foxhound Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Foxhound Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 10, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: December 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28258 Filed 12–27–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0040; FRL–10542–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing Area Sources (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing Area Sources (EPA ICR Number 2274.07, OMB Control Number 2060–0606), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2023. Public comments were previously requested, via the **Federal Register** on July 22, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 27, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0040, to: (1) EPA online using *https://www.regulations.gov/* (our preferred method), or by email to *docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB's Office of Information and Regulatory Affairs using the interface at: *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats,

information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at: *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is: 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing Area Sources (40 CFR part 63, subparts RRRRRR, SSSSSS, and TTTTTT) were proposed on September 20, 2007; and promulgated on December 26, 2007. These regulations apply to the following existing and new facilities: (1) clay ceramics manufacturing facilities that process more than 50 tons per year of wet clay and are area sources of hazardous air pollutants (HAP); (2) glass manufacturing facilities that use continuous furnaces to produce glass that contains HAP as raw materials and are area sources of HAP; and (3) secondary nonferrous metals processing facilities that are area sources of HAP. Clay ceramics manufacturing facilities include facilities that manufacture pressed tile, sanitaryware, dinnerware, or pottery with an atomized glaze spray booth or kiln that fires glazed ceramic ware. Glass manufacturing facilities include facilities that manufacture flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials, to produce molten glass and form the molten glass into sheets, containers, or other shapes. Secondary nonferrous metals processing facilities means brass and bronze ingot making, secondary magnesium processing, or secondary zinc processing plants that use furnace melting operations to melt post-consumer nonferrous metal scrap to make products including bars, ingots, blocks, or metal powders. New facilities include those that commenced either construction, or modification or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subparts RRRRRR, SSSSSS, and TTTTTT.

Form Numbers: None.

Respondents/affected entities: Area sources of clay ceramics manufacturing, glass manufacturing, and secondary nonferrous metals processing.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts RRRRRR, SSSSSS, and TTTTTT).

Estimated number of respondents: 87 (total).

Frequency of response: Initially.

Total estimated burden: 1,970 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $250,000 (per year), which includes $13,900 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most-recently approved ICR is due to an adjustment. The adjustment increase is due to an increase in the number of respondents, including one new respondent expected during the three-year period of this ICR. There is an increase in cost due to the increased number of respondents and due to the use of updated labor rates. This ICR uses labor rates from the most-recent Bureau of Labor Statistics report (September 2021) to calculate respondent burden costs.

The new source is not expected to incur capital costs; therefore, there is no change in the capital/startup costs from the most-recently approved ICR. There is an increase in O&M costs due to the use of updated labor rates associated with inspections of emission control systems for glass manufacturing facilities. This ICR uses the technical labor rate from the most-recent Bureau of Labor Statistics report (September 2021) to calculate respondent burden costs associated with inspection of emission control systems.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–28077 Filed 12–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0082; FRL–10546–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Hospital/Medical/Infectious Waste Incinerators (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Hospital/Medical/Infectious Waste Incinerators (EPA ICR Number 1730.12, OMB Control Number 2060–0363) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2023. Public comments were previously requested via the **Federal Register** on July 22, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 27, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0082, to (1) EPA online using *https://www.regulations.gov/* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB's Office of Information and Regulatory Affairs using the interface at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and

Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting are available, in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Hospital/Medical/Infectious Waste Incinerators (40 CFR part 60, subpart Ec) were proposed on February 27, 1995, promulgated on September 15, 1997, and amended on October 6, 2009, April 4, 2011, and May 12, 2013. The original standards applied to either owners or operators of Hospital/Medical/Infectious Waste Incinerators (HMIWI) for which construction commenced after June 20, 1996, or for which modification commenced after March 16, 1998, but no later than April 6, 2010. Sources subject to the original standards are now covered under the revised Emission Guidelines for HMIWI at 40 CFR part 60, subpart Ce. This information request covers the reporting and recordkeeping requirements associated with the revised NSPS, which apply to new facilities only. New facilities include those that commenced construction after December 1, 2008 or commenced modification after April 6, 2010. This information is being collected to assure compliance with 40 CFR part 60, subpart Ec.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Hospital/Medical/Infectious Waste Incinerators (HMIWI).

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Ec).

Estimated number of respondents: 3 (total).

Frequency of response: Semiannual, annual.

Total estimated burden: 1,780 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $370,000 (per year), includes $157,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an overall decrease in burden from the most recently approved ICR. The decrease in burden is due to an adjustment due to more accurate estimates of existing and anticipated new sources. This ICR adjusts the number of facilities subject to 40 CFR part 60, subpart Ec and reflects a decrease in the number of respondents with HMIWI units from ten to three. This adjustment is based on the EPA's updated inventory of affected sources which reflects consolidation within the industry. This ICR also updates the capital and operation and maintenance costs to 2021 dollars using the 2021 annual Chemical Engineering Plant Cost Index.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–28268 Filed 12–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0711; FRL–10548–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Data Requirements Rule for the 1-Hour Sulfur Dioxide Primary National Ambient Air Quality Standard (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted a renewal of an information collection request (ICR), Data Requirements Rule for the 1-Hour Sulfur Dioxide Primary National Ambient Air Quality Standard (EPA ICR Number 2495.05, OMB Control Number 2060–0696) to Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This notice is a proposed extension of the ICR, which is currently approved through December 31, 2022. Public comments were previously requested via the **Federal Register** on October 11, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comment.

DATES: Additional comments may be submitted on or before January 27, 2023.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OAR–2013–0711 online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sydney Lawrence, Office of Air Quality Planning and Standards, Air Quality Policy Division, C504–05, U.S. Environmental Protection Agency, Research Triangle Park, NC; telephone number: (919) 541–4768; email address: *lawrence.sydney@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about the EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This ICR includes estimates for the submission and processing of emissions and emissions-related information and ambient air dispersion modeling reporting and activities, associated with the 40 CFR part 51 Requirements for Preparation, Adoption and Submittal of Implementation Plans, as they apply to the 2010 1-Hour Sulfur Dioxide (SO_2) Primary NAAQS. These

data and information are collected by various state and local air quality management agencies and reported to the EPA. State and local air management agencies were required to submit either monitoring or modeling information in order to meet the initial and on-going requirements, as applicable, to characterize air quality concentrations in areas with specific emissions sources identified under the final SO_2 Data Requirements Rule (DRR). This proposed ICR Renewal adopts (with some revisions) the estimates contained in the original ICR, and it includes burden estimates for the development, submittal, and processing of the information described above to meet ongoing requirements under the DRR during the period January 1, 2023–December 31, 2025. For those state and local air management agencies that chose to conduct ambient monitoring rather than air quality modeling to characterize air quality around specific emissions sources during the initial phase of DRR implementation (2016), such monitoring is required by subpart BB of part 51, and information collections associated with initial ambient air quality monitoring required under part 51 were initially included in the prior versions of the DRR ICR. Currently, the DRR requires that ongoing monitoring continue to meet the operational constraints and requirements in 40 CFR part 58, and any collections associated with ongoing monitoring under the DRR are now covered by the part 58 ICR (EPA ICR No. 0940.29; OMB No. 2060–0084). Therefore, ongoing collections of ambient monitoring data have been removed from coverage by the DRR ICR to avoid duplicative burden calculations. Future renewals of the part 58 ICR will continue to cover any collections of ongoing ambient air monitoring data that were initiated under subpart BB of part 51, so long as any of those monitors continues to operate.

Form Numbers: None.

Respondents/affected entities: State, local and tribal air pollution management control agencies.

Respondent's obligation to respond: Mandatory (40 CFR part 51).

Estimated number of respondents: 36 states, providing emissions and in some cases air quality modeling for 137 sources.

Frequency of response: Annually for ongoing modeling annual report.

Total estimated burden: Specific hours for modeling not estimated, all labor is reported in the estimated cost for modeling. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,014,000 (per year) for modeling.

Changes in Estimates: Air agencies that elected under subpart BB of part 51 to conduct ambient monitoring for listed DRR sources are responsible for collecting ambient air quality data information and submitting these data electronically to EPA's Air Quality System (AQS) and other voluntary databases. While information collections associated with initial ambient air quality monitoring under part 51 were included in the prior version of the DRR ICR, any collections associated with ongoing monitoring are now covered by the part 58 ICR for ambient monitoring. This information collection and the associated burden are captured under the Ambient Air Quality Surveillance 40 CFR part 58 ICR (OMB #2060–0084, EPA ICR# 0940.29). Ongoing collections have been removed from the DRR ICR to avoid duplicative burden calculations.

The prior renewal of this ICR estimated a maximum possible burden of $5,100,000 annually for modeling sources. This ICR renewal, estimating a range of $150,700 to $3,014,000 annually, reflects a decrease in the maximum possible burden of $2,086,000 annually for modeling sources. This decrease is due to the reduced number of listed sources for which states chose to conduct air quality modeling to meet their DRR requirements.

Courtney Kerwin,

Director, Collection Strategies Division.

[FR Doc. 2022–28281 Filed 12–27–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 20–299; FCC 22–1309; FR ID 120095]

Sponsorship Identification Requirements for Foreign Government-Provided Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Media Bureau extends the comment and reply comment deadlines for the Second Notice of Proposed Rulemaking Regarding Sponsorship Identification Requirements for Foreign Government-Provided Programming.

DATES: The extended comment deadline is January 9, 2023, and the extended reply comment deadline is January 24, 2023.

ADDRESSES: You may submit comments, identified by MB Docket No. 20–299, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* (mail to: *fcc504@fcc.gov*) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar, Media Bureau, Industry Analysis Division, *Radhika.Karmarkar@fcc.gov,* (202) 418–1523.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Public Notice, MB 20–299, released on December 13, 2022. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at *https://apps.fcc.gov/edocs_public/* (*https://apps.fcc.gov/edocs_public/*). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov*

(mail to: *fcc504@fcc.gov*) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. By this Public Notice, the Media Bureau extends the deadlines for filing comments and reply comments in the above-captioned proceeding. On October 6, 2022, the Commission released a Second Notice of Proposed Rulemaking (Second Notice) seeking comment on new rules to strengthen the process for identifying foreign governmental entities. The Second Notice specified comment and reply comments dates of 30 and 45 days, respectively, after **Federal Register** publication. That publication occurred on November 17, 2022, and on November 18, 2022, the Media Bureau released a Public Notice (Public Notice), announcing a comment filing deadline of December 19, 2022, and a reply comment filing deadline of January 3, 2023, for the Second Notice.

2. On December 7, 2022, the Multicultural Media, Telecom and internet Council (MMTC) and the National Association of Broadcasters (NAB) (collectively, Joint Filers) requested an extension of the comment and reply comment filing deadlines until January 9 and January 24, 2023, respectively. The Joint Filers correctly note that ''three significant Federal holidays'' occur during the comment cycle. Citing holiday-related closures, the Joint Filers explain how it is ''challenging'' under the original filing deadline ''to gather relevant information from individual broadcasters and lessees affected by the proposed rules, build useful consensus around the issues in this proceeding, and draft comments and reply comments.'' A coalition of religious organizations (the Religious Programmers) filed in support of the Joint Filers' Motion, also noting the difficulties presented by the intervening holidays.

3. As set forth in section 1.46(a) of the Commission's rules, the Commission's policy is that extensions of time shall not be routinely granted. We find, however, that the Joint Filers have provided sufficient justification to warrant grant of their requested extension. As an extension should enable interested parties to present more complete and thoughtful comments to the Commission, we agree with the Joint Filers that the extension should not disadvantage any party or cause significant delay in the resolution of this proceeding.

Federal Communications Commission.

Thomas Horan,

Chief of Staff,Media Bureau.

[FR Doc. 2022–28206 Filed 12–27–22; 8:45 am]

BILLING CODE 6712–01–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.: 201254–002.

Agreement Name: Sealand/CMA CGM West Coast of Central America Slot Charter Agreement.

Parties: Maersk A/S DBA Sealand and CMA CGM S.A.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The amendment revises the strings and amount of space being chartered under the Agreement; adds a new Article 5.10, and updates Article 12.

Proposed Effective Date: 2/2/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/10193.

Agreement No.: 201368–001.

Agreement Name: ONE/CMA CGM Slot Exchange Agreement.

Parties: CMA CGM S.A. and Ocean Network Express Pte. Ltd.

Filing Party: Robert Magovern, Cozen O'Connor.

Synopsis: The amendment adds Malaysia, Thailand, and Vietnam to the geographic scope of the Agreement and provides for ONE to receive space on CMA CGM's PRX and JAX service in case of slot exchange imbalance.

Proposed Effective Date: 2/4/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/49505.

Dated: December 22, 2022.

JoAnne O'Bryant,

Program Analyst, Secretary.

[FR Doc. 2022–28267 Filed 12–27–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 12, 2023.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org*:

1. *The Steven M. Dalton 2012 Gift Trust Fund, Stephen M. Dalton, Jr., individually, and as trustee, all of Sugar Land, Texas; the Everett McCain Dalton 2012 Gift Trust Fund, Everett M. Dalton, individually, and as trustee, and William E. Dalton, Jr., all of Houston, Texas; Elizabeth McCain, Takoma Park, Maryland; James E. McCain, III, Summerfield, Florida; Marguerite M. Lloyd, individually, and as executor of the Estate of Sam Lloyd, both of Sewanne, Tennessee; and Reynolds McCain and Patricia McCain, both of Columbus, Mississippi*; to join the McCain/Dalton Family Group, a group

acting in concert, to retain voting shares of Bancorp of Okolona, Inc., and thereby indirectly retain voting shares of BankOkolona, both of Okolona, Mississippi.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–28264 Filed 12–27–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–1313]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request (ICR) titled ''Distribution of Traceable Opioid Material Kits (TOM Kits) across U.S. and International Laboratories'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on 09/16/2022 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Distribution of Traceable Opioid Material Kits (TOM Kits) across U.S. and International Laboratories (OMB Control No. 0920–1313, expiration date 12/31/2022)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In response to the Health and Human Services (HHS) Acting Secretary's 2017 and ongoing public health emergency declaration on opioids, the Centers for Disease Control and Prevention (CDC) has led the development of Traceable Opioid Material Kits (TOM Kits) to support detection of emerging opioids. CDC maintains the contents of the TOM Kits based on new needs identified, in part, through the U.S. Drug Enforcement Agency (DEA) Emerging Threat Reports. For example, the DEA 2018 data indicated that fentanyl and fentanyl-related compounds accounted for approximately 76 percent of their opioid identifications.

The CDC is requesting a three-year Paperwork Reduction Act (PRA) clearance for a revision of this ICR (formerly known as ''Distribution of Traceable Opioid Material Kits [TOM Kits] across U.S. Laboratories'')(OMB Control No. 0920–1313). As part of the proposed revisions, CDC will be expanding its program to include a new line of TOM Kits, the Emerging Drug Panel (EDP) Kits. For the EDP Kits, non-opioid compounds will be identified and updated by searching recent lists put out by the DEA and the Center for Forensic Science Research and Education (CFSRE). These lists provide data on all classes of drugs that were recently identified in the field and provide recommendations on which drugs should be included in testing. They are updated several times a year and keep up with the changing drug landscape in the United States. For the current round, EDP Kits will include synthetic cannabinoids, stimulants, hallucinogens, and benzodiazepines.

CDC will distribute TOM Kits through a single vendor, which will manufacture the test kits. The CDC vendor will distribute these kits to domestic laboratories, as previously approved under CDC contract. As a revision, the CDC vendor will distribute these test kits to international laboratories in partnership with the United Nations and under a separate contract with the International Narcotics Control Board (INCB) (hereafter, collectively coined the ''UN''). The UN, and not the CDC, is paying the vendor to ship the kits to international requesters.

TOM Kits are not intended for diagnostic use and are free to domestic and international laboratories in the public, private, clinical, law enforcement, research, and public health domains. The CDC vendor collects both application and laboratory information on domestic laboratories when they apply for test kits. International laboratories that apply for test kits through the UN will be directed to complete and share their laboratory information with the vendor, but not with the CDC. This information is used to prioritize which laboratories will receive kits when quantities are limited. The brief web-based surveys will allow the CDC to: (1) determine what service the recipient laboratory performs; and to (2) equitably distribute test kits based on the analysis techniques and matrices used by the recipient laboratory.

Over the past three years, CDC has received 1,472 requests from interested laboratories (approximately 490 requests per year) and has distributed 3,007 TOM Kits. Based on this experience and with the addition of EDP Kits, we anticipate that up to 600 domestic laboratories will request test kits per year. Given that each application will take six minutes, the annual time burden for 600 domestic laboratories will be 60 hours. CDC will add 20 additional annual burden hours for the international distribution of test kits. We estimate that 300 international partner laboratories will apply for test kits per year with the UN, which in turn will direct these laboratories to complete the brief four-minute survey on laboratory information on the CDC vendor website.

There is no burden on the respondents other than their time. CDC estimates a total estimated time burden of 80 hours per year.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
U.S. Federal Laboratories	Test Kit Application and Questions for US Laboratories (online).	200	1	6/60
State, Local, and Tribal Government Laboratories.	Test Kit Application and Questions for US Laboratories (online).	200	1	6/60
Private or Not-for-Profit US Institutions	Test Kit Application and Questions for US Laboratories (online).	200	1	6/60
International Laboratories	Test Kit Questions for International Laboratories.	300	1	4/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–28164 Filed 12–27–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[OMB No. 0915–0322—Extension]

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Data Collection Tool for State Offices of Rural Health Grant Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than February 27, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer at (301) 594–4394.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Data Collection Tool for State Offices of Rural Health Grant Program, OMB No. 0915–0322—Extension.

Abstract: The HRSA, Federal Office of Rural Health Policy (FORHP), is requesting OMB approval to continue use of a Technical Assistance (TA) Data Form for the State Offices of Rural Health (SORH) Grant program established by section 338J of the Public Health Service Act (42 U.S.C. 254r). In its authorizing language (sec. 711 of the Social Security Act [42 U.S.C. 912]), Congress charged FORHP with administering grants, cooperative agreements, and contracts to provide TA and other activities as necessary to support activities related to improving health care in rural areas. The mission of FORHP is to sustain and improve access to quality health care services for rural communities. This electronic form is used to collect information from SORH grantees on the amount of direct TA they provide to clients within their state.

Need and Proposed Use of the Information: FORHP seeks to continue gathering information from grantees on their efforts to provide TA to clients within their state. SORH grantees submit a TA Report that includes: (1) the total number of TA encounters provided directly by the grantee, and (2) the total number of unduplicated clients that received direct TA from the grantee. These measures will continue in these three categories: (1) information disseminated, (2) information created, and (3) collaborative efforts by (a) topic area and (b) type of audience. These measures are used to obtain an accurate depiction of the breadth of SORH work based on recommendations from the grantees. Submission of the TA Report is submitted via the HRSA Electronic Handbook no later than 60 days after the end of each 12-month budget period.

Grant dollars are awarded annually; therefore, this information is needed annually by the program in order to measure effective use of grant dollars consistently among all the grantees.

Likely Respondents: Fifty SORH award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Instrument name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Technical Assistance Report	50	1	50	13.5	675
Total	50		50		675

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. 2022–28159 Filed 12–27–22; 8:45 am]

BILLING CODE 4165–15–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 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 November 1, 2022, through November 30, 2022. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the 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. Holly LaPointe, Wethersfield, Connecticut,

Court of Federal Claims No: 22–1627V
2. Daniel Lenehan, Bethel Park, Pennsylvania, Court of Federal Claims No: 22–1629V
3. Marc Wushowunan Livingston, San Diego, California, Court of Federal Claims No: 22–1630V
4. Amy Watkins, Bangor, Maine, Court of Federal Claims No: 22–1632V
5. Mandi J. Bravo, Caldwell, Idaho, Court of Federal Claims No: 22–1633V
6. Barbara Fribush, Boston, Massachusetts, Court of Federal Claims No: 22–1635V
7. Emily Barmichael on behalf of E. C. B., Hollywood, Florida, Court of Federal Claims No: 22–1636V
8. Elisabeth Kelley, Hixson, Tennessee, Court of Federal Claims No: 22–1639V
9. Stephanie Harlow, Little Compton, Rhode Island, Court of Federal Claims No: 22–1640V
10. Stephanie Smith, Wenonah, New Jersey, Court of Federal Claims No: 22–1641V
11. Amy Corneli, Durham, North Carolina, Court of Federal Claims No: 22–1642V
12. Lakeevra Butler, Conyers, Georgia, Court of Federal Claims No: 22–1644V
13. Cherlyn Jensen, Kapolei, Hawaii, Court of Federal Claims No: 22–1645V
14. Sage Comora, Pueblo, Colorado, Court of Federal Claims No: 22–1646V
15. Trudee Ann Mendonca, Riverside, Rhode Island, Court of Federal Claims No: 22–1647V
16. Tamika Boatwright, Ellicott City, Maryland, Court of Federal Claims No: 22–1648V
17. Lynne Guzman on behalf of S. F., Deceased, Phoenix, Arizona, Court of Federal Claims No: 22–1649V
18. Israel Collins, Portland, Maine, Court of Federal Claims No: 22–1650V
19. Catherine Carone on behalf of N. C., Park Ridge, Illinois, Court of Federal Claims No: 22–1651V
20. Miriam Moody, New Bern, North Carolina, Court of Federal Claims No: 22–1652V
21. Allison Roosa, Philadelphia, Pennsylvania, Court of Federal Claims No: 22–1653V
22. Amanda Gray, Charlottesville, Virginia, Court of Federal Claims No: 22–1654V
23. Deana Lasseter, Marietta, Georgia, Court of Federal Claims No: 22–1655V
24. Shea Gillstrap on behalf of A. N., Phoenix, Arizona, Court of Federal Claims No: 22–1658V
25. Lucille Abshire, Inwood, West Virginia, Court of Federal Claims No: 22–1659V
26. Thomas M. Murray and Maria Murray on behalf of M. M., Phoenix, Arizona, Court of Federal Claims No: 22–1660V
27. Erika Franks, Phoenix, Arizona, Court of Federal Claims No: 22–1661V
28. Dajuan Williams, Boscobel, Wisconsin, Court of Federal Claims No: 22–1662V
29. Setsu Korb, San Juan Capistrano, California, Court of Federal Claims No: 22–1665V
30. Kristin Thompson on behalf of K. T., Phoenix, Arizona, Court of Federal Claims No: 22–1667V
31. Mary Harnocz, Phoenix, Arizona, Court of Federal Claims No: 22–1668V
32. Angelina Diaz, Ennis, Texas, Court of Federal Claims No: 22–1669V
33. Sue Cardona on behalf of T. C., Phoenix, Arizona, Court of Federal Claims No: 22–1670V
34. Derek Workman, Maitland, Florida, Court of Federal Claims No: 22–1671V
35. Kathleen Collins, Livonia, Michigan, Court of Federal Claims No: 22–1672V
36. Alice Thierfelder, Marshfield, Wisconsin, Court of Federal Claims No: 22–1674V
37. Susann Frink, Rochester, New York, Court of Federal Claims No: 22–1675V
38. Rosanna Charles, San Jose, California, Court of Federal Claims No: 22–1678V
39. James Command on behalf of the estate of Kathleen Command, Deceased, Grand Rapids, Michigan, Court of Federal Claims No: 22–1679V
40. Vanvette Heath, Brooklyn, New York, Court of Federal Claims No: 22–1680V
41. Ada Mochari, Mineola, New York, Court of Federal Claims No: 22–1681V
42. Corine Jefferson, Akron, Ohio, Court of Federal Claims No: 22–1683V
43. James Dalrymple, Leland, North Carolina, Court of Federal Claims No: 22–1684V
44. Kathy Nicholas, Searcy, Arkansas, Court of Federal Claims No: 22–1685V
45. Georgia Jackson, Meridian, Mississippi, Court of Federal Claims No: 22–1686V
46. Tessa Lee-Thomas, Brooklyn, New York, Court of Federal Claims No: 22–1687V
47. Frances Kerr, Katy, Texas, Court of Federal Claims No: 22–1688V
48. Edwin Hauer, St. Cloud, Minnesota, Court of Federal Claims No: 22–1692V
49. Kimberly Mosley, Charlotte, North Carolina, Court of Federal Claims No: 22–1697V
50. Mary Capri, Lake Forest, Illinois, Court of Federal Claims No: 22–1698V
51. Tobey Nichols, Parkersburg, West Virginia, Court of Federal Claims No: 22–1700V
52. Sicely D. Martin, Lee's Summit, Missouri, Court of Federal Claims No: 22–1702V
53. Lloyd McKay, Houma, Louisiana, Court of Federal Claims No: 22–1703V
54. Megan Bortles, Englewood, Colorado, Court of Federal Claims No: 22–1704V
55. Kelly McClusky on behalf of L. M., Phoenix, Arizona, Court of Federal Claims No: 22–1706V
56. Sarah Grindle, Longmont, Colorado, Court of Federal Claims No: 22–1707V
57. Michael Barnes, Frankenmuth, Michigan, Court of Federal Claims No: 22–1708V
58. Robert Moore, San Jose, California, Court of Federal Claims No: 22–1712V
59. Susan Rogers, Grass Valley, California, Court of Federal Claims No: 22–1714V
60. Staci Metzger, Boston, Massachusetts, Court of Federal Claims No: 22–1715V
61. Ilene Robinson Sunshine, Boston, Massachusetts, Court of Federal Claims No: 22–1717V
62. Janet Wichman, Montrose, California, Court of Federal Claims No: 22–1718V
63. Deborah Butler, Boston, Massachusetts, Court of Federal Claims No: 22–1719V
64. James Winfield, Arthur, Illinois, Court of Federal Claims No: 22–1721V
65. Karl Wittmann, New York, New York, Court of Federal Claims No: 22–1722V
66. Lourdes Irizarry Santiago, Boston, Massachusetts, Court of Federal Claims No: 22–1723V
67. Hanna Battung, Commerce, California, Court of Federal Claims No: 22–1725V
68. Jenna Raimond, Phoenix, Arizona, Court of Federal Claims No: 22–1726V
69. Jessica Fischer, Phoenix, Arizona, Court of Federal Claims No: 22–1727V
70. Trella Adams, Perry, Georgia, Court of Federal Claims No: 22–1728V
71. Sharon H. Rambo, Midlothian, Texas, Court of Federal Claims No: 22–1731V
72. Daniel Goddard, New York, New York, Court of Federal Claims No: 22–1733V
73. Laurie Ryan, Colorado Springs, Colorado, Court of Federal Claims No: 22–1734V
74. Amy McAllister, Columbus, Ohio, Court of Federal Claims No: 22–1735V
75. Joyce Stegall, Flossmoor, Illinois, Court of Federal Claims No: 22–1737V
76. Juanita Fishbaugh, Spokane, Washington, Court of Federal Claims No: 22–1742V
77. Avia McDaniel, Cibolo, Texas, Court of Federal Claims No: 22–1743V
78. Tory Boyer, Wilmette, Illinois, Court of Federal Claims No: 22–1746V
79. John Buonocore, Washington, District of Columbia, Court of Federal Claims No: 22–1747V
80. Margaret Tremba, Greensburg, Pennsylvania, Court of Federal Claims No: 22–1749V
81. Isabella Domotor, Phoenix, Arizona, Court of Federal Claims No: 22–1750V
82. Kelly Wasko, Boston, Massachusetts, Court of Federal Claims No: 22–1751V
83. Laura Cymansky, Denver, Colorado, Court of Federal Claims No: 22–1752V

[FR Doc. 2022–28224 Filed 12–27–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meetings of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a meeting is scheduled to be held for the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB). The meeting will be open to the public via Zoom and teleconference; a pre-registered public comment session will be held during the meeting. Pre-registration is required for members of the public who wish to present their comments at the meeting via Zoom/teleconference. Individuals who wish to send in their written public comment should send an email to *CARB@hhs.gov.* Registration information is available on the website

http://www.hhs.gov/paccarb and must be completed by January 18, 2023 for the January 24–25, 2023 Public Meeting. Additional information about registering for the meeting and providing public comment can be obtained at *http://www.hhs.gov/paccarb* on the Upcoming Meetings page.

DATES: The meeting is scheduled to be held on January 24–25, 2023, from 10 a.m. to 4 p.m. ET (times are tentative and subject to change). The confirmed times and agenda items for the meeting will be posted on the website for the PACCARB at *http://www.hhs.gov/paccarb* when this information becomes available. Pre-registration for attending the meeting is strongly suggested and should be completed no later than January 18, 2023.

ADDRESSES: Instructions regarding attending this meeting virtually will be posted at least one week prior to the meeting at: *http://www.hhs.gov/paccarb.*

FOR FURTHER INFORMATION CONTACT: Jomana Musmar, M.S., Ph.D., Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, 1101 Wootton Parkway, Rockville, MD 20852. Phone: 202–746–1512; Email: *CARB@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB), established by Executive Order 13676, is continued by section 505 of Public Law 116–22, the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019 (PAHPAIA). Activities and duties of the Advisory Council are governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. app.), which sets forth standards for the formation and use of Federal advisory committees.

The PACCARB shall advise and provide information and recommendations to the Secretary regarding programs and policies intended to reduce or combat antibiotic-resistant bacteria that may present a public health threat and improve capabilities to prevent, diagnose, mitigate, or treat such resistance. The PACCARB shall function solely for advisory purposes.

Such advice, information, and recommendations may be related to improving: the effectiveness of antibiotics; research and advanced research on, and the development of, improved and innovative methods for combating or reducing antibiotic resistance, including new treatments, rapid point-of-care diagnostics, alternatives to antibiotics, including alternatives to animal antibiotics, and antimicrobial stewardship activities; surveillance of antibiotic-resistant bacterial infections, including publicly available and up-to-date information on resistance to antibiotics; education for health care providers and the public with respect to up-to-date information on antibiotic resistance and ways to reduce or combat such resistance to antibiotics related to humans and animals; methods to prevent or reduce the transmission of antibiotic-resistant bacterial infections; including stewardship programs; and coordination with respect to international efforts in order to inform and advance the United States capabilities to combat antibiotic resistance.

The January 24–25, 2023, public meeting will continue the PACCARB's discussion about how antimicrobial resistance can be integrated into existing national pandemic preparedness plans. The focus of the meeting will be exploring the challenges regarding communicating science and antimicrobial resistance during a pandemic, as well as exploring how to address equity and vulnerable populations in these plans. The meeting agenda will be posted on the PACCARB website at *http://www.hhs.gov/paccarb* when it has been finalized. All agenda items are tentative and subject to change. Instructions regarding attending the meeting virtually will be posted at least one week prior to the meeting at: *http://www.hhs.gov/paccarb.*

Members of the public will have the opportunity to provide comments live during the January meeting by pre-registering online at *http://www.hhs.gov/paccarb.* Pre-registration is required for participation in this session with limited spots available. Written public comments can also be emailed to *CARB@hhs.gov* by midnight January 18, 2023 and should be limited to no more than one page. All public comments received prior to January 18, 2022, will be provided to the PACCARB members. Additionally, companies and/or organizations involved in combating antibiotic resistance have an opportunity to present their work to members of the PACCARB live during an Innovation Spotlight. Pre-registration is required for participation, with limited spots available. All information regarding this session can also be found online at *http://www.hhs.gov/paccarb.*

Dated: November 22, 2022.

Jomana F. Musmar,

Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health.

[FR Doc. 2022–28217 Filed 12–27–22; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel Aging and cognitive decline.

Date: January 3, 2023.

Time: 11:00 a.m. to 12:00 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: Joanna Szczepanik, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 1000D, Bethesda, MD 20892, (301) 827–2242 *szczepaj@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28183 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Beeson Review.

Date: February 16–17, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28190 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 17–18, 2023.

Open: May 17, 2023, 8:30 a.m. to 1:00 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, C-Wing 6th Floor Conference Center, Conference Rooms A, B, F, and G, 31 Center Drive, Bethesda, MD 20892.

Closed: May 18, 2023, 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C-Wing 6th Floor Conference Center, Conference Rooms A, B, F, and G, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28176 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel More Monitoring of Cognitive Change.

Date: January 25, 2023.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joshua Jin-Hyouk Park, Ph.D., Scientific Review Officer, National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212 Bethesda, MD 20892 (301) 496–6208, *joshua.park4@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28189 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–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: NIGMS Initial Review Group Training and Workforce Development Study Section—B Review of Pre-doctoral T32 Applications (TWD–B).

Date: February 17, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, (301) 594–4859, *latarsha.carithers@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: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28187 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 13–14, 2023.

Open: September 13, 2023, 8:30 a.m. to 1:00 p.m.

Agenda: To present the Director's Report and other scientific presentations

Place: National Institutes of Health, Building 31, C-Wing 6th Floor Conference Center, Conference Rooms A, B, F, and G, 31 Center Drive, Bethesda, MD 20892.

Closed: September 14, 2023, 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C-Wing 6th Floor Conference Center, Conference Rooms A, B, F, and G, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28184 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, TEP–8A: SBIR Contract Review, February 1, 2023, 9:30 a.m. to 5:30 p.m., National Cancer Institute at Shady Grove, Room 7W030, 9609 Medical Center Drive, Rockville, Maryland, 20850 which was published in the **Federal Register** on December 19, 2022, FR Doc 2022–27417, 87 FR 77624.

This notice is being amended to change the meeting time from 9:30 a.m.-5:30 p.m. to 10:00 a.m.-2:00 p.m. on February 1, 2023. The meeting date and location will stay the same. The meeting is closed to public.

Dated: December 21, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28186 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel PHS 2023–1 Topic 115 Phase I: Development of Diagnostics to Differentiate HIV Infection from Vaccine-Induced Seropositivity.

Date: January 26, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Barry J. Margulies, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20852, (301) 761–7956, *barry.margulies@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 21, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28228 Filed 12–27–22; 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 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: Center for Scientific Review Special Emphasis Panel; Cancer Therapy.

Date: January 3, 2023.

Time: 1:00 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: Shahana Majid, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *shahana.majid@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28177 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting website *https://videocast.nih.gov/watch=48752.*

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 Arthritis and Musculoskeletal and Skin Diseases Advisory Council National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: January 31, 2023.

Open: 10:00 a.m. to 12:10 p.m.

Agenda: Discussion of Program Policies and Issues.

Open: 12:20 p.m. to 1:45 p.m.

Agenda: NIAMS Intramural Research Program (IRP) Annual Report; New Topics; Concept Clearance.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Democracy I, Suite 800, Bethesda, MD 20892–4872 (Virtual Meeting).

Closed: 2:30 p.m. to 3:20 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Democracy I, Suite 800, Bethesda MD 20892–4872 (Virtual Meeting).

Contact Person: Kathy Salaita, SCD, Chief, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Rm 818, Bethesda, MD 20892, 301–594–5033 *kathy.salaita@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28192 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–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, NIGMS Review of Applications for Innovative Programs to Enhance Research Training (IPERT) (R25) awards and the MOSAIC Institutionally-Focused Research Education (UE5) Awards.

Date: March 20, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Science, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Isaah S. Vincent, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12L, Bethesda, MD 20892, (301) 594–2948, *isaah.vincent@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: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28194 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel AD Genetics.

Date: January 19, 2023.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg, Suite 2W200, Bethesda, MD 20892, (301) 496–9667, *prasadnb@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28185 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 16–17, 2023.

Closed: May 16, 2023, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Open: May 17, 2023, 10:00 a.m. to 2:00 p.m.

Agenda: Call to order and report from the Director; Discussion of future meeting dates; Consideration of minutes of last meeting; Reports from Task Force on Minority Aging Research, Working Group on Program; Council Speaker; Program Highlights.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Closed: May 17, 2023, 2:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth Santora, Ph.D., Director, Office of Extramural Activities, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *ksantora@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/about/naca,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28188 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–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: NIGMS Initial Review Group Training and Workforce Development Study Section–D Review IRACDA and Bridges to the Baccalaureate Applications.

Date: March 1, 2023.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Science, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tracy Koretsky, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3An.12F, Bethesda, MD 20892 301 594 2886, *tracy.koretsky@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: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28191 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, January 20, 2023, 1:00 p.m. to January 20, 2023, 03:00 p.m., National Institutes of Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD, 20892 which was published in the **Federal Register** on December 14, 2022, 320439.

The meeting notice is amended to change the date of the meeting from January 20, 2023 to January 27, 2023. The time of the meeting will remain 1:00 p.m. to 3:00 p.m. The meeting is closed to the public.

Dated: December 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28182 Filed 12–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of Agency Information Collection Activity Under OMB Review: Pipeline Corporate Security Reviews and Security Directives

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0056, abstracted below, to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. This collection combines TSA's voluntary Pipeline Corporate Security Review (PCSR) program with the mandatory requirements under the TSA Security Directive (SD) Pipeline–2021–02 series. The collection allows TSA to assess the current security practices in the pipeline industry through TSA's PCSR program, which is part of the larger domain awareness, prevention, and protection program supporting TSA's and the Department of Homeland Security's missions. The collection also allows for the continued institution of mandatory cybersecurity requirements under the TSA SD Pipeline–2021–02 series. The updated ICR reflects changes to collection requirements based on TSA's update to the SD Pipline–2021–02 series, released on July 21, 2022.

DATES: Send your comments by January 27, 2023. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on October 3, 2022, 87 FR 59816.

This collection is separate from those associated with the requirements of TSA SD Pipeline 2021–01.[1]

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov upon its submission to OMB.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Pipeline Corporate Security Reviews (PCSR) Security Directives.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0056.

Forms(s): Pipeline Corporate Security Review (PCSR) Protocol Form and documents submitted to TSA pursuant to the requirements in the Security Directive.

Affected Public: Hazardous Liquids and Natural Gas Pipeline Industry.

Abstract: Under the Aviation and Transportation Security Act[2] and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for ''security in all modes of transportation . . . including security responsibilities . . . over modes of transportation that are exercised by the Department of Transportation.''[3] Congress' specific recognition of TSA's responsibility for pipeline security is reflected in Sec. 1557 of the *Implementing Recommendations of the 9/11 Commission Act of 2007,* Public Law 110–53 (121 Stat. 266; Aug. 3, 2007). In addition, TSA has statutory authority to issue security directives (SDs) as necessary to protect transportation

[1] There are three information collection requirements associated with TSA Security Directive Pipeline 2021–01. OMB control number 1652–0055 addresses two of them and OMB control number 1652–0050 addresses the third.

[2] Public Law 107–71 (115 Stat. 597; Nov. 19, 2001), codified at 49 U.S.C. 114.

[3] *See* 49 U.S.C. 114(d). The TSA Administrator's current authorities under the Aviation and Transportation Security Act have been delegated to him by the Secretary of Homeland Security. Section 403(2) of the Homeland Security Act (HSA) of 2002, Public Law 107–296 (116 Stat. 2135, Nov. 25, 2002), transferred all functions of TSA, including those of the Secretary of Transportation and the Under Secretary of Transportation of Security related to TSA, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Administrator of TSA, subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including that in section 403(2) of the HSA.

security and critical infrastructure. *See* 49 U.S.C. 114(*l*)(2).

TSA has historically assessed industry security practices through its PCSR program.[4] The PCSR is a voluntary, face-to-face visit with a pipeline owner/operator during which TSA discusses an owner/operator's corporate security planning and the entries made by the owner/operator on the PCSR Form. The PCSR Form includes 150 questions concerning the owner/operator's corporate level security planning, covering security topics such as physical security, vulnerability assessments, training, and emergency communications. TSA uses the information collected during the PCSR process to determine baseline security standards, potential areas of security vulnerability, and industry ''smart'' practices throughout the pipeline mode. While the PCSR collection supports security plans and processes, TSA has issued the security directives with mandatory requirements in order to mitigate specific security concerns posed by current threats to national security.

Establishing Compliance With Mandatory Requirements in the TSA SD Pipeline–2021–02 Series; Information Collection Requirements (Emergency Revision)

On July 15, 2021, OMB approved TSA's requests for an emergency revision of this information collection, allowing for the institution of mandatory requirements issued in TSA SD Pipeline–2021–02 on July 19, 2021. *See* ICR Reference Number: 202107–1652–002. This SD mandated that critical pipeline owner/operators take the following actions: (1) Implement critically important mitigation measures to reduce the risk of compromise from a cyberattack; (2) develop and maintain an up-to-date Cybersecurity Contingency/Response Plan; and (3) test the effectiveness of the operator's cybersecurity practices through an annual cybersecurity architecture design review. Subsequently, on July 26, 2022, OMB approved TSA's request to extend the information collection. *See* ICR Reference Number: 202111–1652–001. On December 10, 2021, and December 17, 2021, TSA revised the SD Pipeline–2021–02 series. These updates did not affect the information collection requirements.

On July 21, 2022, TSA issued a substantive revision to the series, SD Pipeline 2021–02C. This revision provides owner/operators with more flexibility to meet the intended security outcomes while ensuring sustainment of the cybersecurity enhancements accomplished through this SD series. Overall, SD Pipeline–2021–02C changed the cybersecurity requirements from a prescriptive approach to a performance-based approach focused on certain security outcomes. The revision also clarified that the requirements apply to Critical Cyber Systems, as defined in the SD, and changed cybersecurity assessment requirements.

On July 29, 2022, OMB approved TSA's requests for the emergency revision of this information collection, allowing for the implementation of the revisions in SD Pipeline–2021–02C. *See* ICR Reference Number: 202207–1652–001.

SD Pipeline 2021–02C requires identified owner/operators to meet three general requirements: (1) Establish and implement a TSA-approved Cybersecurity Implementation Plan; (2) develop and maintain an up-to-date Cybersecurity Incident Response Plan; and (3) establish a Cybersecurity Assessment Program and submit an annual plan. In addition, owner/operators must make records to establish compliance with the SD available to TSA upon request for inspection and/or copying.

Submissions by pipeline owner/operators in compliance with the voluntary PCSR or the mandatory SD Pipeline–2021–02 series requirements are deemed Sensitive Security Information (SSI) and are protected in accordance with procedures meeting the transmission, handling, and storage requirements of SSI in 49 CFR part 1520.

Revision of the Collection

TSA is changing the name of OMB control number 1652–0056 from ''Pipeline Corporate Security Review (PCSR)'' to ''Pipeline Corporate Security Reviews (PCSR) and Security Directives'' to more accurately represent the information collection. TSA is also revising the information collection to remove a portion of the cybersecurity questions from the PCSR workbook, which are covered in a separate ICR, 1652–0050 Critical Facility Information of the Top 100 Most Critical Pipelines. As a result, TSA removed the majority (~ 60) of the cybersecurity questions in the PCSR workbook, moving from 210 to 160 questions, which resulted in a burden reduction to the voluntary collection.

TSA is seeking renewal of this information collection for the maximum three-year approval period.

Number of Respondents: 100 respondents annually.

Estimated Annual Burden Hours: 20,180 hours.[5]

Dated: December 21, 2022.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2022–28175 Filed 12–27–22; 8:45 am]

BILLING CODE 9110–05–P

[4] *See* section 1557 of Public Law 110–53 (121 Stat. 266; Aug. 3, 2007) as codified at 6 U.S.C. 1207.

[5] In the 60-day notice, TSA reported the annual burden hours as 20,220. Since then, TSA has revised the voluntary collection, resulting in a reduction in the annual burden hours. TSA estimates the total annual burden hours for the collection to be 20,180 hours (PCSR–180, Cybersecurity Incident Response Plan-8,000, Annual Plan for Cybersecurity Assessment-4,000, Compliance Documentation-8,000). In addition, the one-time burden for the development and submission to TSA of the owner/operator's Cybersecurity Implementation Plan is 40,000 hours.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R8–ES–2022–0143; FXES11140800000–234–FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Proposed Habitat Conservation Plan Amendment for the Multiple Species Conservation Program County of San Diego Subarea Plan, County of San Diego, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application to amend the incidental take permit (PRT–840414) issued for the existing *Multiple Species Conservation Program County of San Diego Subarea Plan* (MSCP Subarea Plan). The County of San Diego (Applicant) has requested an amendment to the incidental take permit. The amendment would modify the MSCP Subarea Plan boundary to add approximately 77 acres of land solely for conservation purposes. If amended, no additional incidental take will be authorized. The Applicant will follow all other existing habitat conservation plan conditions. We also announce a public comment period. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: To ensure consideration, please send your written comments by January 27, 2023.

ADDRESSES:

Obtaining Documents: Electronic copies of the documents this notice

announces, along with public comments received, will be available online in Docket No. FWS–R8–ES–2022–0143 at *https://www.regulations.gov.*

Submitting Comments: You may submit comments by one of the following methods:

- *Email: fw8cfwocomments@fws.gov.* Please include ''MSCP Subarea Plan Boundary Line Amendment'' at the beginning of your comments.
- *U.S. mail:* Assistant Field Supervisor; Carlsbad Fish and Wildlife Office; U.S. Fish and Wildlife Service; 2177 Salk Avenue, Suite 250; Carlsbad, CA 92008.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Snyder, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760–431–9440, email at *jonathan_d_snyder@fws.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. 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: We, the U.S. Fish and Wildlife Service (Service), have received an application from the County of San Diego to amend the incidental take permit (PRT–840414) issued for the existing Multiple Species Conservation Program County of San Diego Subarea Plan (MSCP Subarea Plan). We also announce a public comment period. We invite comments from the public and Federal, Tribal, State, and local governments.

We have made a preliminary determination that amendment of the permit is neither a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), nor will it individually or cumulatively have more than a negligible effect on the species covered in the MSCP Subarea Plan. Therefore, the permit amendment qualifies as a categorical exclusion under NEPA as provided by the Department of the Interior Manual (516 DM 8.5(C)(2)).

Background

On March 17, 1998, the Service issued an incidental take permit (PRT–840414), pursuant to section 10(a)(1)(B) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), for 85 species covered by the MSCP Subarea Plan. The MSCP Subarea Plan boundary encompasses 252,132 ac of unincorporated land in south San Diego County, California. Opportunity for public review of the original permit application and the habitat conservation plan was provided in the **Federal Register** on March 28, 1997 (62 FR 14938) and November 14, 1997 (62 FR 61140).

The applicant is seeking an amendment to their incidental take permit, consistent with section 1.14.2 of the MSCP Subarea Plan Implementing Agreement, to modify the MSCP Subarea Plan boundary to add 77.02 acres of land for conservation purposes (*i.e.,* a ''hardline preserve'') to be used as mitigation for projects impacting non-native grassland.

The conservation lands are in an unincorporated portion of northern San Diego County in the community of Ramona, approximately 0.5 mile north of the existing MSCP Subarea Plan boundary. The conservation land consists of four parcels (Assessor's Parcel Numbers 283–055–28–00, 283–055–29–00, 283–055–30–00, 283–055–31–00, and 283–055–31–00) located northeast of the intersection of Highland Valley and Dye roads, south of State Route 67 (SR–67), and west of Etcheverry Street. The parcels support vernal pool, southern willow scrub, freshwater marsh, and nonnative grassland vegetation communities, which include potential habitat for the federally listed endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*) and the burrowing owl (*Athene cunicularia*), both MSCP Subarea Plan covered species. More details on the specific parcels and their locations are available in the permit amendment application (see **ADDRESSES**).

Public Comments

If you wish to comment on the permit application, proposed HCP amendment, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and National Environmental Policy Act regulations (40 CFR 1506.6).

Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2022–28226 Filed 12–27–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[FWS–R5–NWRS–2022–N062; FF05R00000 FXRS12610500000]

Northeast Canyons and Seamounts Marine National Monument; Proposed Joint Monument Management Plan

AGENCY: Fish and Wildlife Service, Interior; National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of intent; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration intend to prepare a draft monument management plan for the Northeast Canyons and Seamounts Marine National Monument, which was established by Presidential Proclamation 9496 and updated by Presidential Proclamation 10287. When the draft plan is complete, we will advertise its availability and seek public comment. We furnish this notice to advise the public and Federal, Tribal, State, and local governments and agencies of our intentions, and to obtain suggestions and information on the scope of issues to consider during the planning process. An environmental assessment to evaluate the potential effects of various management alternatives will also be prepared. The environmental assessment will provide resource managers with the information needed to determine if the potential effects may be significant and warrant preparation of an environmental impact statement, or if the potential impacts lead to a finding of no significant impact.

DATES: To ensure consideration, we must receive your written comments by January 27, 2023.

ADDRESSES: *Document availability and comment submission:* Additional information about the Monument is available at *https://www.fws.gov/national-monument/northeast-canyons-and-seamounts-marine* and *https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/northeast-canyons-and-seamounts-marine-national.*

Please send your written comments or requests for more information by one of the following methods:

- *Email: ncsmnm_planning@fws.gov.*
- *U.S. Mail:* Brittany Petersen, Marine Monument Superintendent, USFWS; 300 Westgate Center Drive; Hadley, MA 01035.

For more information, please see Public Availability of Comments.

FOR FURTHER INFORMATION CONTACT: Brittany Petersen, U.S. Fish and Wildlife Service, Marine National Monument Superintendent, by phone at 413–253–8329, or via email at *ncsmnm@fws.gov;* or Marianne Ferguson, National Oceanic and Atmospheric Administration, by phone at 978–675–2188, or via email at *marianne.ferguson@noaa.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. 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:

Background

On October 8, 2021, President Joseph Biden issued Proclamation 10287 (86 FR 57349, October 15, 2021), charging the Secretaries of the managing agencies, the Department of the Interior and the Department of Commerce (Departments), to prepare a joint management plan for the Northeast Canyons and Seamounts Marine National Monument by September 15, 2023.

Monument Establishment and Management Responsibilities

On September 15, 2016, President Barack Obama issued Presidential Proclamation 9496 (81 FR 65161, September 21, 2016), establishing the Northeast Canyons and Seamounts Marine National Monument (Monument) under the authority of the Antiquities Act of 1906. The canyon and seamount area contains objects of historic and scientific interest that are situated upon lands owned or controlled by the Federal Government—the Monument was established for the purpose of preserving these objects for the public interest. More information about the Monument's establishment and regulated activities can be found in Presidential Proclamation 9496 (81 FR 65161, September 21, 2016).

The Monument is composed of two units, located in the Atlantic Ocean approximately 130 miles (mi) (209 kilometers (km)) southeast of Cape Cod, Massachusetts. The Canyons Unit includes three underwater canyons—Oceanographer, Gilbert, and Lydonia—and covers approximately 941 square mi (mi^2) (2,437 square km (km^2)). The Seamounts Unit includes four seamounts—Bear, Mytilus, Physalia, and Retriever—and encompasses 3,972 mi^2 (10,287 km^2). The waters and submerged lands within the Monument boundaries total approximately 4,913 mi^2 (12,725 km^2).

The Secretary of the Interior and Secretary of Commerce share management responsibilities for the Monument, as directed by Presidential Proclamations 9496 and 10287, under their applicable legal authorities. The Proclamations require the Secretaries to prepare a management plan within their respective authorities for the Monument and promulgate and implement regulations that address specific actions necessary for the proper care and management of the Monument. With this notice, the Departments are commencing development of the Monument Management Plan (MMP, plan). The Departments will work cooperatively under the U.S. Fish and Wildlife Service's (Service) lead in this process and intend to cooperatively coordinate in the development and timing of this planning process and implementation of the plan.

The Monument's Natural Resources

The Northeast Canyons and Seamounts Marine National Monument harbors exceptional geological features, in an area where the Gulf Stream and the Deep Western Boundary Current meet, creating the ideal conditions that result in a nutrient-rich, biodiverse area in the ocean. This area of productivity draws in a diversity of ocean life and supplies these creatures with nursery, feeding, and migration habitats.

The submarine canyons and seamounts create dynamic currents and eddies that enhance biological productivity and provide feeding and wintering grounds for seabirds; pelagic species, including whales, dolphins, and turtles; and highly migratory fish, such as tunas, billfish, and sharks. The warm Gulf Stream conditions support at least 54 species of corals. The corals, together with other structure-forming fauna such as sponges and anemones, create a foundation for vibrant deep-sea ecosystems, providing food, spawning habitat, and shelter for an array of fish and invertebrate species. The abundant waters are a beacon for the Atlantic's seabirds, including Atlantic puffins (*Fratercula arctica*), razorbills (*Alca torda*), shearwaters, gannetts, and even Bermuda storm-petrels (*Pterodroma cahow*), which were once thought to be extinct. Endangered species such as the sperm whale (*Physeter macrocephalus*), Kemp's Ridley sea turtle (*Lepidochelys kempii*), and a variety of others have been viewed within the Monument's boundaries. The ecological conditions found in the Monument sustain a diverse food web that is unique to this area along the Atlantic coast.

The Canyons Unit

Oceanographer, Gilbert, and Lydonia Canyons are among the largest of the major submarine canyons that line the U.S. continental shelf. They extend approximately 22 to 30 mi in length (35 to 48 km), and range in depth from approximately 500 feet (ft) (152 meters (m)) at their heads to around 7,700 ft (2,345 m) where they intersect with the continental rise, making them deeper than the Grand Canyon. Active erosion and powerful ocean currents transport sediments and organic carbon through the canyons, resulting in habitats for sponges, corals, and other invertebrates that filter food from the water to flourish, and for larger species such as squid, octopus, skates, flounders, and crabs. Major oceanographic features, such as currents, temperature gradients, eddies, and fronts, occur on a large scale and influence the distribution patterns of such highly migratory oceanic species. These unique conditions support an area with some of the highest diversity of marine mammals along the East Coast of the United States.

The Seamounts Unit

Bear, Physalia, Mytilus, and Retriever Seamounts are extinct underwater volcanoes, and the only seamounts in the U.S. Atlantic Exclusive Economic Zone (EEZ). They form the beginning of the New England Seamount chain, which stretches halfway across the western North Atlantic Ocean. Bear Seamount is approximately 100 million years old and the largest of the four; it rises approximately 8,200 ft (2,499 m) from the seafloor to within 3,280 ft (1,000 m) of the sea surface. Its summit is over 12 mi (19 km) in diameter. The three smaller seamounts reach to within 6,500 ft (1,981 m) of the sea surface. All

four seamounts have steep and complex topography that interrupts passing currents; this action provides a constant supply of plankton and nutrients to the animals that inhabit the unit. It also causes upwelling of nutrient-rich waters toward the ocean surface. These seamounts support highly diverse ecological communities, with deep-sea corals that are hundreds to thousands of years old and a wide array of other bottom-dwelling marine organisms not found on the surrounding deep-sea floor. They provide shelter from predators, increased food, nurseries, and spawning areas. The New England Seamounts have many rare and endemic species, several of which are new to science and are not known to live anywhere else on Earth.

The Monument Management Plan Development Process

The MMP's format will include elements similar to a National Wildlife Refuge System comprehensive conservation plan (CCP), and the planning process for those elements will be conducted in a manner similar to the CCP planning and public involvement process. The MMP will be updated every 15 years.

We will conduct environmental reviews of various management alternatives and develop an environmental assessment (EA) in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), as amended; NEPA regulations (40 CFR parts 1500–1508); other Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

The Service, as lead agency for NEPA purposes, will also designate and involve as cooperating agencies the Department of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), the Department of Defense, and the Department of State.

Public Involvement

The Service and NOAA will conduct the planning process in a manner that will provide participation opportunities for the public, Tribes, Federal and local government agencies, and other interested parties. At this time, we are seeking ideas and comments to help guide the management of the Monument. Potential topics may include, but are not limited to:

- Research
- Outreach and engagement
- Environmental education
- Conservation of the resource

Because the Proclamations prohibit commercial fishing within the Monument (with the exception of red crab and lobster until September 15, 2023), the MMP will not consider management alternatives that allow commercial fishing. Opportunities for additional public input will be announced throughout the planning process.

Next Steps

The Service and NOAA will consider your comments during development of the Draft MMP/EA.

Public Availability of Comments

Before including your address, phone number, 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Kyla Hastie,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28203 Filed 12–27–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR09600000, 23XR0680G1, RX.15234000.4000001]

Tribal Notice To Consult on Implementation of the Inflation Reduction Act

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Tribal consultation and request for comments.

SUMMARY: The Bureau of Reclamation (Reclamation) is publishing this notice to announce that Reclamation plans to consult with federally recognized Indian Tribes in Reclamation's 17 western states on implementation of the Inflation Reduction Act as it applies to Tribes.

DATES: The Tribal consultation will be held virtually on Tuesday, January 24, 2023, from 2 p.m. to approximately 5 p.m. (MST). Additional consultations will be scheduled and announced through a future **Federal Register** notice in the months ahead. Submit comments on the consultation on or before January 31, 2023.

ADDRESSES: The virtual meeting held on Tuesday, January 24, 2023, may be accessed at *https://usbr.gov/native/tribal_consultation.html.* To call into the meeting by phone (audio only): Call-in phone number: (202) 640–1187; Conference ID: 192299827#.

Send written comments on the consultation to *USBR.IR.Act@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey K. Morris, Program Manager, Native American and International Affairs Office, Bureau of Reclamation, telephone (303) 445–3373, email at *jmorris@usbr.gov.* Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the Inflation Reduction Act of 2022, Reclamation received $550 million for Domestic Water Projects, $25 million for Canal Improvements Projects, and $4 billion for the Drought Mitigation in the Reclamation states (Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming). Federally recognized Indian Tribes located in the Reclamation states are eligible to participate in all of these programs. Reclamation also received $12.5 million for Emergency Drought Relief for Tribes that are impacted by the operation of a Reclamation water project in the 17 western states.

Reclamation conducted a listening session on the Inflation Reduction Act for Tribes on September 30, 2022. Material provided in the listening session and additional information on the impacts of the Inflation Reduction Act on Reclamation is posted at this website: *https://www.usbr.gov/inflation-reduction-act/.*

Reclamation is making it a priority to garner input from Tribal leaders on the important opportunities and decisions related to the Inflation Reduction Act as it relates to Indian Tribes in the Reclamation states. These programs will be implemented over a few years, which may require that we consult at multiple decision points. With this consultation, Reclamation is seeking Tribal input to inform early planning decisions.

Public Disclosure of Comments: 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.

Kelly Titensor,

Acting Program Manager, Native American and International Affairs Office, Commissioner's Office-U.S. Bureau of Reclamation.

[FR Doc. 2022–28239 Filed 12–27–22; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000.XXXR4081G3 RX.05940913.FY19400]

Call for Nominations for the Glen Canyon Dam Adaptive Management Work Group Federal Advisory Committee

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The U.S. Department of the Interior (Interior) proposes to appoint members to the Glen Canyon Dam Adaptive Management Work Group (AMWG). The Secretary of the Interior (Secretary), acting as administrative lead, is soliciting nominations for qualified persons to serve as members of the AMWG.

DATES: Nominations must be postmarked by February 13, 2023.

ADDRESSES: Nominations should be sent to Mr. Daniel Picard, Deputy Regional Director, Bureau of Reclamation, 125 S. State Street, Room 8100, Salt Lake City, UT 84138, or submitted via email to *borsha-ucr-gcdamp@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Callister, Manager, Resources Management Division, at (801) 524–3781, or by email at *kcallister@usbr.gov.* Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The Grand Canyon Protection Act (Act) of October 30, 1992, Public Law 102–575; and the Federal Advisory Committee Act, as amended, 5 U.S.C. appendix 2 authorized creation of the AMWG to provide recommendations to the Secretary in carrying out the responsibilities of the Act to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including but not limited to, natural and cultural resources and visitor use.

The duties or roles and functions of the AMWG are in an advisory capacity only. They are to: (1) establish AMWG operating procedures, (2) advise the Secretary in meeting environmental and cultural commitments including those contained in the Record of Decision for the Glen Canyon Dam Long-Term Experimental and Management Plan Final Environmental Impact Statement and subsequent related decisions, (3) recommend resource management objectives for development and implementation of a long-term monitoring plan, and any necessary research and studies required to determine the effect of the operation of Glen Canyon Dam on the values for which Grand Canyon National Park and Glen Canyon Dam National Recreation Area were established, including but not limited to, natural and cultural resources, and visitor use, (4) review and provide input on the report identified in the Act to the Secretary, the Congress, and the Governors of the Colorado River Basin States, (5) annually review long-term monitoring data to provide advice on the status of resources and whether the Adaptive Management Program (AMP) goals and objectives are being met, and (6) review and provide input on all AMP activities undertaken to comply with applicable laws, including permitting requirements.

Membership Criteria

Prospective members of AMWG need to have a strong capacity for advising individuals in leadership positions, teamwork, project management, tracking relevant Federal government programs and policy making procedures, and networking with and representing their stakeholder group. Membership from a wide range of disciplines and professional sectors is encouraged.

Members of the AMWG are appointed by the Secretary and are comprised of:

a. The Secretary's Designee, who serves as Chairperson for the AMWG.

b. One representative each from the following entities: The Secretary of Energy (Western Area Power Administration), Arizona Game and Fish Department, Hopi Tribe, Hualapai Tribe, Navajo Nation, San Juan Southern Paiute Tribe, Southern Paiute Consortium, and the Pueblo of Zuni.

c. One representative each from the Governors from the seven basin States: Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

d. Representatives from the general public as follows: two from environmental organizations, two from the recreation industry, and two from contractors who purchase Federal power from Glen Canyon Powerplant.

e. One representative from each of the following Interior agencies as ex-officio non-voting members: Bureau of Reclamation, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, and National Park Service.

At this time, we are particularly interested in applications from representatives of the following:

a. one each from the basin states of Nevada and Utah;

b. one from the Native American Tribes of Hopi, Navajo Nation, and the Pueblo of Zuni;

c. two from environmental organizations;

d. one from the recreation industry.

After consultation, the Secretary will appoint members to the AMWG. Members will be selected based on their individual qualifications, as well as the overall need to achieve a balanced representation of viewpoints, subject matter expertise, regional knowledge, and representation of communities of interest. AMWG member terms are limited to 3 years from their date of appointment. Following completion of their first term, an AMWG member may request consideration for reappointment to an additional term. Reappointment is not guaranteed.

Typically, AMWG will hold two in-person meetings and one webinar meeting per fiscal year. Between meetings, AMWG members are expected to participate in committee work via conference calls and email exchanges. Members of the AMWG and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the AMWG, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by 5 U.S.C. 5703.

Nominations should include a resume that provides an adequate description of the nominee's qualifications, particularly information that will enable Interior to evaluate the nominee's potential to meet the membership requirements of the AMWG and permit Interior to contact a potential member. Please refer to the membership criteria stated in this notice.

Any interested person or entity may nominate one or more qualified

individuals for membership on the AMWG. Nominations from the seven basin states, as identified in this notice, need to be submitted by the respective Governors of those states, or by a state representative formally designated by the Governor. Persons or entities submitting nomination packages on the behalf of others must confirm that the individual(s) is/are aware of their nomination. Nominations must be postmarked no later than February 13, 2023 and sent to Mr. Daniel Picard, Deputy Regional Director, Bureau of Reclamation, 125 S. State Street, Room 8100, Salt Lake City, UT 84138.

Authority: 5 U.S.C. appendix 2.

Daniel Picard,

Deputy Regional Director, Alternate Designated Federal Officer, Interior Region 7: Upper Colorado Basin, Bureau of Reclamation.

[FR Doc. 2022–28155 Filed 12–27–22; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1339]

Certain Smart Thermostat Hubs, Systems Containing the Same, and Components of the Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion for Leave To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 9) of the presiding administrative law judge (''ALJ'') granting the complainants' motion for leave to amend the complaint and notice of investigation to add ITI Hong Kong Co., Ltd of Tsuen Wan, Hong Kong (''ITI'') as an additional respondent.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On October 24, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by EDST, LLC and Quext IoT, LLC, both of Lubbock, Texas (collectively, ''Complainants''). *See* 87 FR 64247 (Oct. 24, 2022). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain smart thermostat hubs, systems containing the same, and components of the same by reason of the infringement of certain claims of U.S. Patent Nos. 10,825,273; 10,803,685; and 11,189,118. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names iApartments, Inc. of Tampa, Florida; and Hsun Wealth Technology Co., Ltd. and Huarifu Technology Co., Ltd. (''Huarifu''), both of Taoyuan City, Taiwan, as respondents. *Id.* The Office of Unfair Import Investigations is not participating in this investigation.

The Commission previously terminated the investigation as to respondent Huarifu based on Complainants' partial withdrawal of the complaint. Order No. 5 (Nov. 9, 2022), *unreviewed by* Comm'n Notice (Dec. 2, 2022).

On December 1, 2022, Complainants filed an unopposed motion to amend the complaint to add ITI as a respondent. No response to the unopposed motion was filed.

On December 7, 2022, the ALJ issued the subject ID (Order No. 9) granting Complainants' unopposed motion for leave to amend the complaint and notice of investigation. Order No. 9 (December 7, 2022). The subject ID finds that Complainants' unopposed motion is supported by good cause pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)) and that there is no prejudice to any party if the motion is granted.

No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID (Order No. 9). ITI is added as a respondent to the investigation.

The Commission vote for this determination took place on December 21, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 21, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–28193 Filed 12–27–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1334–1337 (Review)]

Emulsion Styrene-Butadiene Rubber From Brazil, Mexico, Poland, and South Korea; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty orders on emulsion styrene-butadiene rubber (ESBR) from Brazil, Mexico, Poland, and South Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: December 22, 2022.

FOR FURTHER INFORMATION CONTACT: Tyler Berard (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 4, 2022, the Commission determined that responses to its notice of institution of the subject five-year reviews were such

that full reviews should proceed (87 FR 76509, December 14, 2022); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on May 3, 2023, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold an in-person hearing in connection with these reviews beginning at 9:30 a.m. on May 23, 2023. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 17, 2023. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the review, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on May 19, 2023. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on May 22, 2023. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 12, 2023. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 31, 2023. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 31, 2023. On June 27, 2023, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 29, 2023, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C.1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 22, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–28244 Filed 12–27–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1185 (Second Review)]

Steel Nails From the United Arab Emirates; Notice of Commission Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty order on steel nails from the United Arab Emirates would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date.

DATES: December 5, 2022.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On December 5, 2022, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (87 FR 53777, September 1, 2022) were adequate. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 22, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–28266 Filed 12–27–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–00046]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Extension of a Currently Approved Collection; Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until February 27, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Jennifer Scott, Firearms Enforcement Specialist, Firearms Industry Programs Branch, by mail at 99 New York Avenue NE, Mail Stop 6.N–518, Washington, DC 20226, email at *fipb-informationcollection@atf.gov,* or telephone at (202) 648–7190.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component Sponsor: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other (if applicable): Federal Government.

Abstract: The letter is used by a law enforcement officer to purchase firearms to be used in his/her official duties from a licensed firearm dealer anywhere in the country. The letter shall state that the firearm is to be used in the official duties of the officer and that he/she has not been convicted of a misdemeanor crime of domestic violence.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50,000 respondents will utilize the letter template associated with this information collection. It will take each

respondent approximately 8 minutes to complete a response to this IC.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 6,667, which is equal to 50,000 (total respondents) * 1 (# of response per respondent) * .133333 (8 minutes).

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: December 21, 2022.

Robert Houser,

Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–28210 Filed 12–27–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1123]

Bulk Manufacturer of Controlled Substances Application: Isosciences, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Isosciences, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 27, 2023. Such persons may also file a written request for a hearing on the application on or before February 27, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on November 11, 2022, Isosciences, LLC, 340 Mathers Road, Ambler, Pennsylvania 19002–3420, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cathinone	1235	I
Methcathinone	1237	I
Lysergic acid diethylamide	7315	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
3,4-Methylenedioxyamphetamine	7400	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
5-Methoxy-N–N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
Dihydromorphine	9145	I
Heroin	9200	I
Nicocodeine	9309	I
Nicomorphine	9312	I
Normorphine	9313	I
Thebacon	9315	I
Normethadone	9635	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N- phenylacrylamide)	9811	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4- yl)propionamide	9816	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N- phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1- phenethylpiperidin-4-yl)isobutyramide)	9824	I
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N- phenylacetamide	9825	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N- phenylfuran-2-carboxamide)	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2- carboxamide	9843	I
Amphetamine	1100	II

Controlled substance	Drug code	Schedule
Methamphetamine	1105	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Isomethadone	9226	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Thebaine	9333	II
Levo-alphacetylmethadol	9648	II
Oxymorphone	9652	II
Thiafentanil	9729	II
Alfentanil	9737	II
Sufentanil	9740	II
Carfentanil	9743	II
Fentanyl	9801	II

The company plans to manufacture bulk controlled substances for use in analytical testing. In reference to drug codes 7360 (Marihuana) and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–28205 Filed 12–27–22; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 27, 2023 to be assured of consideration.

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: Copies of the submission may be obtained by contacting Venetia Eldridge at (703) 518–1564, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION: *OMB Number:* 3133–0032.

Type of Review: Extension of a currently approved collection.

Title: Records Preservation, 12 CFR part 749.

Abstract: Part 749 of the NCUA regulations directs each credit union to have a vital records preservation program that includes procedures for maintaining duplicate vital records at a location far enough from the credit union's offices to avoid the simultaneous loss of both sets of records in the event of disaster. Part 749 also requires the program be in writing and include emergency contact information for employees, officials, regulatory offices, and vendors used to support vital records.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 116,472.

OMB Number: 3133–0052.

Type of Review: Extension of a currently approved collection.

Title: Federal Credit Union Bylaws, appendix A to part 701.

Abstract: The FCU Act and Bylaws require new and current FCU to prepare and maintain documents, such as organization certificate, charter, notices, meeting minutes, and election results, and notify the NCUA Board of certain changes. FCU's use the information they collect and maintain pursuant to their bylaws in their operations and to provide services to members. NCUA uses the information both to regulate the safety and soundness of FCU and protect the National Credit Union Share Insurance Fund.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 399,298.

OMB Number: 3133–0114.

Type of Review: Extension of a currently approved collection.

Title: Payments on Shares by Public Units and Nonmembers, 12 CFR 701.32.

Abstract: Section 107(6) of the Federal Credit Union Act (Act) and § 701.32 of the NCUA Rules and Regulations (12 CFR part 701) may receive from public units and political subdivisions and nonmember credit unions, payments on shares. Limitations on nonmember and public unit deposits in federal credit unions (FCUs) is 50 percent of the difference of paid-in and unimpaired capital and surplus and any public unit and nonmember shares, as measured at the time of acceptance of each public unit or nonmember share. This collection of information is necessary to protect the National Credit Union Share Insurance Fund (NCUSIF).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 100.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on December 21, 2022.

Dated: December 21, 2022.

Venetia Eldridge,

NCUA PRA Clearance Officer.

[FR Doc. 2022–28167 Filed 12–27–22; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 27, 2023. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2023–035

1. *Applicant:* George Papagapitos, Swan Hellenic Cruises, 1800 SE 10th Ave., Suite 240, Fort Lauderdale, FL 33316

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Area. The applicant seeks an ACA permit to enter Antarctic Specially Protected Areas (ASPA) for the purposes of educational visits to historic huts at Cape Evans, Cape Royds, and Hut Point. All visits would be in accordance with the management plans for each ASPA.

Location

ASPA 155—Cape Evans, Ross Island; ASPA 157—Backdoor Bay, Cape Royds, Ross Island; ASPA 158—Hut Point, Ross Island.

Dates of Permitted Activities

February 15, 2023–March 15, 2023.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–28227 Filed 12–27–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

RIN 3145–AA58

Notice on Penalty Inflation Adjustments for Civil Monetary Penalties

AGENCY: National Science Foundation.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2023.

SUMMARY: The National Science Foundation (NSF or Foundation) is providing notice of its adjusted maximum civil monetary penalties, effective January 15, 2023. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

FOR FURTHER INFORMATION CONTACT: Bijan Gilanshah, Assistant General Counsel, Office of the General Counsel, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: 703.292.5055.

SUPPLEMENTARY INFORMATION: On June 27, 2016, NSF published an interim final rule amending its regulations to adjust, for inflation, the maximum civil monetary penalties that may be imposed for violations of the Antarctic Conservation Act of 1978 (ACA), as amended, 16 U.S.C. 2401 *et seq.,* and the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801, *et seq.* These adjustments are required by the 2015 Act. The 2015 Act also requires agencies to make subsequent annual adjustments for inflation. Pursuant to OMB guidance dated December 15, 2022, the cost-of-living adjustment multiplier for 2023 is 1.07745. Accordingly, the 2023 annual inflation adjustments for the maximum penalties under the ACA are $20,362 ($18,898 × 1.07745) for violations and $34,457 ($31,980 × 1.07745) for knowing violations of the ACA. Finally, the 2023 annual inflation adjustment for the maximum penalty for violations under PFCRA is $13,508 ($12,537 × 1.07745).

Dated: December 22, 2022.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–28247 Filed 12–27–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–206, 50–361, and 50–362; NRC–2022–0219]

Southern California Edison; San Onofre Nuclear Generating Station, Units 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a finding of no significant impact (FONSI) and accompanying environmental assessment (EA) for a requested exemption from certain NRC requirements regarding the Controlled Area Boundary (CAB) for the San Onofre Nuclear Generating Station (SONGS) located in San Diego County, California. Based on the analysis in the EA, the NRC staff has concluded that there will be no significant impacts to environmental resources from the requested exemption and, therefore, a FONSI is appropriate.

DATES: The EA and FONSI referenced in this document are available on December 28, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0219 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0219. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 'Environmental Assessment for the Controlled Area Boundary Exemption for SONGS in San Diego County, California' is available in ADAMS under Accession No. ML22341A195.

- *Project website:* Information related to the SONGS decommissioning project can be accessed on the NRC's public website at *https://www.nrc.gov/info-finder/decommissioning/power-reactor/songs/decomm-plans/publ-avail-doc.html.* In the publicly available documents table, the document is titled 'Environmental Assessment for the Controlled Area Boundary Exemption for SONGS in San Diego County, California.'
- *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. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jean Trefethen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0867, email: *Jean.Trefethen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary

The NRC staff has evaluated the environmental impacts of a requested exemption from paragraph 72.106(b) of title 10 of the *Code of Federal Regulations* (10 CFR), which requires the distance from an Independent Spent Fuel Storage Installation (ISFSI) to the ISFSI CAB to be a minimum of 100 meters (the proposed action). This EA has been prepared pursuant to the NRC regulations in 10 CFR part 51, which implement the requirements of the National Environmental Policy Act of 1969. The EA concludes there are no environmental impacts from the proposed action and a FONSI is appropriate. The EA describes the requested exemption by Southern California Edison (SCE) to reduce the CAB to the SONGS perimeter fence line. This exemption will allow the minimum distance from the closest ISFSI storage location to the CAB to be 38 meters on the western (seaward) side and 95 meters on the eastern (landward) side. Since SCE will no longer control areas beyond its perimeter, SCE will modify post-accident emergency agreements. SCE has agreements with Camp Pendleton, State, and local authorities to remove people from these areas during emergencies such as hostile action, natural disaster, or fire. The reduction of the CAB presents no additional risk to the public and it satisfies a lease condition between SCE and the California State Lands Commission.

The requested exemption is an administrative action and does not involve any construction or ground disturbing activities. The EA evaluated any environmental impacts including impacts to occupational health and impacts from potential acts of terrorism. The NRC has concluded that there are no impacts to land, air, or water resources. The probability of a significant radioactive release caused by a terrorist attack remains very low, and the potential health and land contamination effects of the most severe plausible attack would not be altered by the proposed CAB as compared to the existing CAB.

II. Finding of No Significant Impact

Based on its review of the proposed action, in accordance with the requirements in 10 CFR part 51, the NRC staff has concluded that the requested exemption to the ISFSI CAB boundary will not have a significant environmental impact as discussed in the EA and will not significantly affect the quality of the environment. Therefore, the NRC staff has determined, pursuant to 10 CFR 51.31, that preparation of an environmental impact statement is not required for the proposed action and a FONSI is appropriate.

Dated: December 21, 2022.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Director, Division of Rulemaking, Environmental and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2022–28160 Filed 12–27–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–95 and CP2023–96]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 30, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–95 and CP2023–96; *Filing Title:* USPS Request to Add Priority Mail & Parcel Select Contract 6 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 21, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* December 30, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–28231 Filed 12–27–22; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96565; File No. SR–MRX–2022–27]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 7 To Add Market Data Fees

December 21, 2022.

On December 8, 2022, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to assess market data fees.

On December 19, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–27).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[3]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28202 Filed 12–27–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96556; File No. SR–NYSE–2022–57]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Annual Listing Fee Set Forth in Section 902.03 of the NYSE Listed Company Manual

December 21, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 16, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.03 of the NYSE Listed Company Manual (the ''Manual'') to amend certain of its annual fees charged to listed issuers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain of its annual fees charged to listed issuers as set forth in Section 902.03 of the Manual. The proposed changes will take effect from the beginning of the calendar year commencing on January 1, 2023. The proposed increases in the annual fees reflect increases in the costs the Exchange incurs in providing services to listed companies on an ongoing basis, as well as increases in the costs of conducting its related regulatory activities. As described below, the Exchange proposes to make the proposed fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to companies.

The annual fee for each class of equity security listed on the Exchange is equal to the greater of the minimum fee or the fee calculated on a per share basis.

The Exchange currently charges an annual fee of $0.00117 per share for each of the following: a primary class of common shares (including Equity Investment Tracking Stocks); each additional class of common shares (including tracking stock); a primary class of preferred stock (if no class of common shares is listed); each additional class of preferred stock (whether primary class is common or preferred shares); and each class of warrants or rights. The Exchange proposes to change the per share annual fee for the foregoing classes of securities from $0.00117 per share to $0.001215 per share.

The current minimum annual fee for a primary class of common shares (including Equity Investment Tracking Stocks) or a primary class of preferred stock (if no class of common shares is listed) is $74,000. The Exchange proposes to change this minimum annual fee from $74,000 to $80,000.

Notwithstanding the fact that the Exchange proposes to increase the per share fee rate applicable to all classes of equity securities set forth in Section 902.03, the Exchange does not propose to increase the minimum annual fees charged for additional classes of common shares (including tracking stocks), preferred stocks that are not the primary listed equity security, or warrants or rights. The Exchange believes that the benefits issuers receive in connection with those listings are consistent with the current minimum fee levels, as those types of listings do

not generally entitle issuers to the types of services provided in connection with a primary common stock listing or primary preferred stock listing and the Exchange has therefore not incurred the same level of cost increase associated with them. In addition, their issuers generally also have a primary common stock listing on the Exchange that will be subject to the increased minimum annual fee of $80,000 and the Exchange believes that this increased minimum fee is sufficient to encompass any increases in minimum costs associated with any such issuer.

The revised annual fees will be applied in the same manner to all issuers with listed securities in the affected categories and the Exchange believes that the changes will not disproportionately affect any specific category of issuers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4)[5] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Section 902.03 to increase the annual fees for the various categories of equity securities as set forth above because of the increased costs incurred by the Exchange since it established the current rates.

The Proposed Changes Are Reasonable

The Exchange believes that the proposed changes to its annual fee schedule are reasonable. In that regard, the Exchange notes that its general costs to support its listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies. Specifically, the Exchange has (among other things) increased expenditure on listed companies and the value of an NYSE listing by: making improvements to NYSE Connect, an online service that provides listed companies with access to in-depth information to better understand the trading of their securities; increasing the value of products and services available to qualified listed companies under Section 907.00 of the Manual;[7] and launching the NYSE Institute, whose focus includes providing thought leadership and advocacy on behalf of listed companies.

The Exchange operates in a highly competitive marketplace for the listing of the various categories of securities affected by the proposed annual fee adjustments. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS,[8] the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[9]

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the adoption of the proposed increase to the annual fees for various categories of equity securities represents a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings.

The Exchange proposes to make the aforementioned fee increases in Section 902.03 to better reflect the value of such listing to issuers.

Notwithstanding the fact that the Exchange proposes to increase the per share fee rate applicable to all classes of equity securities set forth in Section 902.03, the Exchange does not propose to increase the minimum annual fees charged for additional classes of common shares (including tracking stocks), preferred stocks that are not the primary listed equity security, or warrants or rights. The Exchange believes that the benefits issuers receive in connection with those listings are consistent with the current minimum fee levels, as those types of listings do not generally entitle issuers to the types of services provided in connection with a primary common stock listing or primary preferred stock listing and the Exchange has therefore not incurred the same level of cost increase associated with them. In addition, their issuers generally also have a primary common stock listing on the Exchange that will be subject to the increased minimum annual fee of $80,000 and the Exchange believes that this increased minimum fee is sufficient to encompass any increases in minimum costs associated with any such issuer.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that the proposed amendments to the annual fees for equity securities are equitable because they do not change the existing framework for such fees, but simply increase the amount of certain of the minimum fees and per unit rates to reflect increased operating costs. Similarly, as the fee structure remains effectively unchanged apart from the proposed increases in the rates paid by all issuers, the changes to annual fees for equity securities neither target nor will they have a disparate impact on any particular category of issuer.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed fee changes are not unfairly discriminatory among issuers of primary classes of common shares (including Equity Investment Tracking Stocks) because the same increases will apply to all such issuers. The Exchange does not propose to increase the minimum annual fees charged for additional classes of common shares (including tracking stocks), preferred stocks that are not the primary listed equity security, or warrants or rights. For the reasons described above under

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Securities Exchange Act Release No. 94222 (February 10, 2022); 87 FR 8886 (February 16, 2022) (SR–NYSE–2021–68).

[8] Release No. 34–51808 (June 9, 2005); 70 FR 37496 (June 29, 2005).

[9] *See* Regulation NMS, 70 FR at 37499.

the heading ''The Proposed Changes are Reasonable,'' the Exchange believes that this is not unfairly discriminatory to the issuers of primary classes of common shares (including Equity Investment Tracking Stocks).

Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list all of the categories of securities covered by the proposed fees and if a company believes that the Exchange's fees are unreasonable it can decide either not to list its securities or to list them on an alternative venue.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition.

The proposed amended fees will be charged to all listed issuers on the same basis. The Exchange does not believe that the proposed amended fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition.

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees, and because issuers may change their chosen listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–57 and should be submitted on or before January 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28197 Filed 12–27–22; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34780; File No. 812–15355]

Forum Real Estate Income Fund, et al.

December 21, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Forum Real Estate Income Fund, Forum Capital Advisors LLC, Forum Structured Finance LP, Forum Structured Finance Parallel LP and Forum Structured Finance SLP LLC.

FILING DATES: The application was filed on June 17, 2022, and amended on October 4, 2022, November 25, 2022, and December 20, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission

orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on January 17, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: *eryan@forumcapadvisors.com* and *khowes@mofo.com.*

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, or Nadya Roytblat, Assistant Chief Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' third amended and restated application, dated December 20, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28181 Filed 12–27–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–202, OMB Control No. 3235–0196]

Proposed Collection; Comment Request; Extension: Rule 17a–22

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 17a–22 (17 CFR 240.17a–22) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–22 requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship. The filings with the Commission must be made within ten days after the materials are issued or made generally available. When the Commission is not the clearing agency's appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency.

The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aides the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Exchange Act.

The respondents to Rule 17a–22 are registered clearing agencies. The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies but on average there are approximately 120 filings per year per active clearing agency. There are nine clearing agencies, but only seven active registered clearing agencies that are expected to submit filings under Rule 17a–22. The Commission staff estimates that each response requires approximately .25 hours (fifteen minutes), which represents the time it takes for a staff person at the clearing agency to properly identify a document subject to the rule, print and make copies, and mail that document to the Commission. Thus, the total annual burden for all active clearing agencies is approximately 210 hours (7 clearing agencies multiplied by 120 filings per clearing agency multiplied by .25 hours).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing by February 27, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 21, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28179 Filed 12–27–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96561; File No. SR–MRX–2022–30]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX's Pricing Schedule at Options 7, Section 7

December 21, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend MRX's Pricing Schedule at Options 7, Section 7.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 2, 2022, MRX initially filed this proposal to amend its Pricing Schedule at Options 7, Section 7, to assess market data fees, which had not been assessed since MRX's inception in 2016.[3] The proposed changes are designed to update data fees to reflect their current value, rather than their value when it was a new exchange six years ago. Newly-opened exchanges often charge no fees for market data to attract order flow to an exchange, and later amend their fees to reflect the true value of those services.[4] Allowing newly-opened exchanges time to build and sustain market share before charging for their market data encourages market entry and promotes competition.

This Proposal reflects MRX's assessment that it is ready to distribute its market data on the same basis as the other 15 options exchanges. When these fees were initially proposed in May 2022, MRX was the only options exchange out of the 16 current options exchanges not to assess market data fees.

The Exchange proposes to amend fees for the following market data feeds within Options 7, Section 7: (1) Nasdaq MRX Depth of Market Data Feed (''Depth of Market Feed'');[5] (2) Nasdaq MRX Order Feed (''Order Feed'');[6] (3) Nasdaq MRX Top of Market Feed (''Top Feed'');[7] (4) Nasdaq MRX Trades Feed (''Trades Feed'');[8] and (5) Nasdaq MRX Spread Feed (''Spread Feed'').[9] Prior to the initial filing of these proposed price changes on May 2, 2022, no fees had been assessed for these feeds.

In addition to the proposed fees for each data feed, the Exchange proposes an Internal Distributor Fee[10] of $1,500 per month for the Depth of Market Feed, Order Feed, and Top Feed, an Internal Distributor Fee of $750 per month for the Trades Feed, and an Internal Distributor Fee of $1,000 per month for the Spread Feed. If a Member subscribes to both the Trades Feed and the Spread Feed, both Internal Distributor Fees would be assessed.

The Exchange also proposes to assess an External Distributor Fee of $2,000 per month for the Depth of Market Feed, Order Feed, and Top Feed, an External

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR–MRX–2022–04), instituting fees for membership, ports and market data. *See* Securities Exchange Act Release No. 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR–MRX–2022–04). On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership (SR–MRX–2022–07), market data (SR–MRX–2022–08) and ports (SR–MRX–2022–09). On August 25, 2022, the Exchange withdrew the market data filing (SR–MRX–2022–08) and replaced it with SR–MRX–2022–14. *See* Securities Exchange Act Release No. 95708 (September 8, 2022), 87 FR 56457 (September 14, 2022) (SR–MRX–2022–14). On October 14, 2022, the Exchange withdrew SR–MRX–2022–14 and replaced it with SR–MRX–2022–22 to reflect changes to the information contained within each of the five MRX market data feeds proposed in SR–MRX–2022–18. *See* Securities Exchange Act Release No. 96144 (October 24, 2022), 87 FR 65273 (October 28, 2022) (SR–MRX–2022–22) (MRX market data fee filing); Securities Exchange Act Release No. 95982 (October 4, 2022), 87 FR 61391 (October 11, 2022) (SR–MRX–2022–18) (modifying the definitions of MRX feeds). On December 8, 2022, the Exchange withdrew SR–MRX–2022–22 and replaced it with SR–MRX–2022–27. On December 19, 2022, the Exchange withdrew SR–MRX–2022–27 and replaced it with the instant filing.

[4] *See, e.g.,* Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), also available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

[5] Nasdaq MRX Depth of Market Data Feed is a data feed that provides full order and quote depth information for individual orders and quotes on the Exchange book and last sale information for trades executed on the Exchange. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on the Exchange and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance). *See* Options 3, Section 23(a)(1).

[6] Nasdaq MRX Order Feed provides information on new orders resting on the book (*e.g.* price, quantity, market participant capacity and Attributable Order tags when provided by a Member). The data provided for each option series includes the symbols (series and underlying security), displayed order types, order attributes (*e.g.,* OCC account number, give-up information, CMTA information), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance), auction and exposure notifications. *See* Options 3, Section 23(a)(2).

[7] Nasdaq MRX Top of Market Feed calculates and disseminates MRX's best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable order and quote interest in the System. The feed also provides last trade information and for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(3).

[8] Nasdaq MRX Trades Feed displays last trade information. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. *See* Options 3, Section 23(a)(4).

[9] Nasdaq MRX Spread Feed is a feed that consists of: (1) options orders for all Complex Orders (*i.e.,* spreads, buy-writes, delta neutral strategies, etc.); (2)full Complex Order depth information, including prices, side, size, capacity, Attributable Complex Order tags when provided by a Member, and order attributes (*e.g.,* OCC account number, give-up information, CMTA information), for individual Complex Orders on the Exchange book; (3) last trades information; and (4) calculating and disseminating MRX's complex best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable Complex Order interest in the System. The feed also provides Complex Order auction notifications. *See* Options 3, Section 23(a)(5).

[10] A ''distributor'' of Nasdaq MRX data is any entity that receives a feed or data file of data directly from Nasdaq MRX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute a Nasdaq Global Data Agreement.

Distributor Fee of $1,000 per month for the Trades Feed, and an External Distributor Fee of $1,500 per month for the Spread Feed.

MRX will also assess Professional [11] and Non-Professional [12] subscriber fees. The Professional Subscriber fee will be $25 per month, and the Non-Professional Subscriber fee will be $1 per month. These subscriber fees (both Professional and Non-Professional) cover the usage of all five MRX data products identified above and would not be assessed separately for each product.[13]

MRX also proposes a Non-Display Enterprise License for $7,500 per month. This license would lower costs for internal professional subscribers and lower administrative costs overall by permitting the distribution of all MRX proprietary direct data feed products to an unlimited number of internal non-display Subscribers without incurring additional fees for each internal Subscriber, or requiring the customer to count internal subscribers.[14] The Non-Display Enterprise License is in addition to any other associated distributor fees for MRX proprietary direct data feed products.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[16] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal is reasonable and unlikely to burden the market in light of MRX's small size, the nature of the fees, and the demonstrated ability of MRX customers to cancel their subscriptions for market data.[17] MRX has had a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.37% in November 2022. The proposed fees are comparable to those of other exchanges; in particular, the proposed MRX fees are lower than those charged by ISE today, as well as those of the MIAX Emerald Options Exchange, C2 Options, and NYSE American Options, to cite a few examples. A sizeable portion of subscribers—approximately 15 percent—have terminated their subscriptions following the implementation of the proposed fees, demonstrating that customers can and do exercise choice in deciding whether to purchase the Exchange's market data feeds.

MRX has had a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending at approximately 1.37% in November 2022. This is the smallest market share of the 16 operating options exchanges.

The proposed fees are comparable to those of other exchanges. For example, the MIAX Emerald Options Exchange charges $3,000 for internal distribution and $3,500 for external distribution of the MIAX Order Feed (''MOR'').[18] The proposed MRX Order Feed is $1,500 for internal distribution and $2,000 for external distribution.

C2 Options charges $2,500 per month for internal and external distribution of its Book Depth Data Feed, plus $50 per Device or user ID for Display Only Service Users (external users).[19] MRX proposes to charge $1,500 for internal distribution, and $2,000 for external distribution, of its Depth of Market Feed.

NYSE American Options charges an access fee of $3,000 per month for its American Options Top, American Options Deep and American Options Complex products, plus a multiple datafeed fee of $200, a redistribution fee of $2,000 per month, and a Professional per user fee of $50 per month and a Non-Professional user fee of $1 per month.[20] MRX proposes to charge no access or multiple datafeed fees, but rather a monthly external distributor fee of $2,000 for Top Feed, and a monthly external distributor fee of $2,000 for its Depth of Market Feed.

Internal distribution fees for the Nasdaq ISE Order Feed is $3,000 per month per distributor for internal use, and $3,000 per month for external redistribution, with additional fees for external controlled devices.[21] Proposed Distributor fees for the MRX Order Feed is $1,500 per month for internal distribution, and $2,000 per month for external distribution.

The Top Quote Feed for ISE is $3,000 per month per distributor for internal use, plus additional fees; $3,000 per month per distributor for professional external distribution, plus other charges; and $3,000 per distributor per month for external Non-Professional distribution through a controlled device.[22] Proposed distributor fees for the MRX Top Feed are $1,500 per month for internal distribution, and $2,000 for external distribution.

MRX views the proposed fees as comparable to those of other options exchanges and fairly representative of the value of its data.

A sizeable portion of subscribers—approximately 15 percent—have terminated their subscriptions following the implementation of the proposed fees, demonstrating that customers can and do exercise choice in deciding whether to purchase the Exchange's market data feeds. As of May 2, 2022, the date that MRX initially proposed these market data fees, MRX reported that two customers had terminated their market data subscriptions.[23] As of now, a total of five firms have cancelled, amounting to approximately 15 percent of the 34 customers that had been taking MRX feeds in the first quarter of 2022.[24]

[11] A Professional Subscriber is any Subscriber that is not a Non-Professional Subscriber.

[12] A Non-Professional Subscriber is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

[13] For example, if a firm has one Professional (Non-Professional) Subscriber accessing Top Quote Feed, Order, and Depth of Market Feed the firm would only report the Subscriber once and pay $25 ($1 for Non-Professional).

[14] The Non-Display Enterprise License of $7,500 per month is optional. A firm that does not have a sufficient number of subscribers to benefit from purchase of the license need not do so.

[15] *See* 15 U.S.C. 78f(b).

[16] *See* 15 U.S.C. 78f(b)(4) and (5).

[17] Nasdaq announced that, beginning in 2022, it would migrate its North American markets to Amazon Web Services in a phased approach, starting with MRX. The MRX migration took place in November 2022. The proposed fee changes are unrelated to that effort.

[18] *See* MIAX Emerald Options Exchange, Fee Schedule (December 8, 2022), available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_12082022c.pdf.*

[19] *See* Cboe U.S. Options Fee Schedule, C2 Options, BBO Data Feed (Effective September 1, 2022), available at *https://www.cboe.com/us/options/membership/fee_schedule/ctwo/.*

[20] *See* NYSE American Options Fee Schedule (March 1, 2022), available at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[21] *See* Nasdaq ISE Rules, Options 7 (Pricing Schedule), Section 10(G) (Nasdaq ISE Order Feed).

[22] *See* Nasdaq ISE Rules, Options 7 (Pricing Schedule), Section 10(H) (Nasdaq ISE Top Quote Feed).

[23] *See* Securities Exchange Act Release No. 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR–MRX–2022–04).

[24] These terminations were limited to market data; none of these customers were members of

Continued

Two of the five customers had access to all five feeds: the Depth of Market Data, the Order Feed, the Top Feed, the Trades Feed, and the Spread Feed. The three remaining customers had access to only two feeds: the Order Feed and the Top Feed. All five customers cancelled all feeds that they had access to.

Three of the five customers were either data vendors or technology suppliers. Data vendors purchase exchange data and redistribute it to downstream customers, while technology suppliers incorporate exchange data into software solutions, which are sold to downstream customers. The remaining two firms engage in options trading, either on their own behalf or that of a customer. The three data vendors/technology suppliers do not trade on their own behalf or on the behalf of any downstream customs, although their customers may do so. The Exchange understands that these three firms cancelled due to insufficient demand from their downstream customers for MRX data. The two remaining firms, which do engage in options trading, have not traded on MRX, but are active traders on other Nasdaq options exchanges.

The Proposal is not unfairly discriminatory. The five market data feeds at issue here—the Depth of Market Feed, Order Feed, Top Feed, Trades Feed, and Spread Feed—are used by a variety of market participants for a variety of purposes. Users include regulators, market makers, competing exchanges, media, retail, academics, portfolio managers. Market data feeds will be available to members of all of these groups on a non-discriminatory basis.

The Proposal is consistent with the typical growth pattern of exchanges. New exchanges commonly waive data fees to attract market participants, facilitating their entry into the market and, once there is sufficient depth and breadth of liquidity, ''graduate'' to compete against established exchanges and charge fees that reflect the value of their services. Other options exchanges have charged market data fees while MRX developed, and now, after 6 years, MRX proposes to do so as well.[25]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the Proposal does not impose any burden on the ability of other options exchanges to compete. MRX market data is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase MRX market data can do so.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because each customer will be able to decide whether or not to purchase the Exchange's market data, as demonstrated by the fact that a significant number of the Exchange's customers have already elected to terminate their access to such feeds.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[26] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2022–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2022–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2022–30 and should be submitted on or before January 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28201 Filed 12–27–22; 8:45 am]

BILLING CODE 8011–01–P

MRX and therefore purchased neither memberships nor ports from the Exchange.

[25] Prior to submission of the proposed pricing changes on May 2, 2022, MRX was the only options exchange not assessing market data fees.

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–180, OMB Control No. 3235–0247]

Proposed Collection; Comment Request; Extension: Form N–8B–4

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form N–8B–4 (17 CFR 274.14) is the form used by face-amount certificate companies to comply with the filing and disclosure requirements imposed by Section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)). Among other items, Form N–8B–4 requires disclosure of the following information about the face-amount certificate company: date and form of organization; controlling persons; current business and contemplated changes to the company's business; investment, borrowing, and lending policies, as well as other fundamental policies; securities issued by the company; investment adviser; depositaries; management personnel; compensation paid to directors, officers, and certain employees; and financial statements. The Commission uses the information provided in the collection of information to determine compliance with Section 8(b) of the Investment Company Act of 1940.

Form N–8B–4 and the burden of compliance have not changed since the last approval. Each registrant files Form N–8B–4 for its initial filing and does not file post-effective amendments to Form N–8B–4.[1] Commission staff estimates that no respondents will file Form N–8B–4 each year. There is currently only one existing face-amount certificate company, and no face-amount certificate companies have filed a Form N–8B–4 in many years. No new face-amount certificate companies have been established since the last OMB information collection approval for this form, which occurred in 2020. Accordingly, the staff estimates that, each year, no face-amount certificate companies will file Form N–8B–4, and that the total burden for the information collection is zero hours. Although Commission staff estimates that there is no hour burden associated with Form N–8B–4, the staff is requesting a burden of one hour for administrative purposes. Estimates of the burden hours are made solely for the purposes of the PRA and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8B–4 is mandatory. The information provided on Form N–8B–4 will not be kept confidential. 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.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by February 27, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: December 21, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28180 Filed 12–27–22; 8:45 am]

BILLING CODE 8011–01–P

[1] Pursuant to Section 30(b)(1) of the Act (15 U.S.C. 80a–29), each respondent keeps its registration statement current through the filing of periodic reports as required by Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) and the rules thereunder. Post-effective amendments are filed with the Commission on the face-amount certificate company's Form S–1. Hence, respondents only file Form N–8B–4 for their initial registration statement and not for post-effective amendments.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96559; File No. SR–NYSEARCA–2022–84]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Representations Relating to the Stance Equity ESG Large Cap Core ETF

December 21, 2022

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 15, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to certain representations made in the proposed rule change previously filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') pursuant to Rule 19b–4 relating to the Stance Equity ESG Large Cap Core ETF (the ''Target ETF''). Shares of the Target ETF are currently listed and traded on the Exchange under NYSE Arca Rule 8.601–E. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Commission has approved the listing and trading on the Exchange of shares of the Target ETF, under NYSE Arca Rule 8.601–E, which governs the listing and trading of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.[4] Shares of the Target ETF are currently listed and traded on the Exchange under NYSE Arca Rule 8.601–E.[5] The shares of the Target ETF are issued by The RBB Fund, Inc. (the ''Issuer''), a corporation organized under the laws of the State of Maryland and registered with the Commission as an open-end management investment company.[6]

The Hennessy Funds Trust has filed a combined prospectus and proxy statement (the ''Proxy Statement'') with the Commission on Form N–14 describing a ''Plan of Reorganization'' pursuant to which the assets of the Target ETF will be merged into the Hennessy Stance ESG Large Cap ETF (''Acquiring ETF''), a series of the Hennessy Funds Trust.[7] According to the Proxy Statement, the Target ETF has the same investment objective and investment strategies as the Acquiring ETF. Following approval of the Target ETF's shareholders and closing of the Reorganization, the Target ETF will transfer all of its assets and liabilities (other than the excluded liabilities) to the Acquiring ETF in exchange for shares of the Acquiring ETF, with the Target ETF distributing shares of the Acquiring ETF pro rata to its shareholders. Shareholders of the Target ETF will thus effectively be converted into shareholders of the Acquiring ETF and will hold shares of the Acquiring ETF with the same NAV as shares of the Target ETF that they held prior to the Reorganization. Following the Reorganization, the Target ETF will be renamed as the Hennessy Stance ESG Large Cap ETF.

In this proposed rule change, the Exchange proposes to change certain representations made in the proposed rule change previously filed with the Commission pursuant to Rule 19b–4 relating to the Target ETF, as described above,[8] which changes would be implemented as a result of the Reorganization.[9] Following the Reorganization, the Acquiring ETF will continue to comply with all initial and continued listing requirements under NYSE Arca Rule 8.601–E.

Hennessy Stance ESG Large Cap ETF

The Notice stated that shares of the Target ETF are issued by The RBB Fund, Inc. Following the Reorganization, shares will be issued by Hennessy Funds Trust. The Target ETF's investment adviser is Red Gate Advisers, LLC. Following the Reorganization, the investment adviser will be Hennessy Advisors, Inc.[10] The

[4] *See* Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95) (Approval of a Proposed Rule Change To Adopt NYSE Arca Rule 8.601–E To Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601–E). Rule 8.601–E(c)(1) provides that ''[t]he term ''Active Proxy Portfolio Share'' means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.'' Rule 8.601–E(c)(2) provides that ''[t]he term ''Actual Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.'' Rule 8.601–E(c)(3) provides that ''[t]he term ''Proxy Portfolio'' means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.''

[5] The Commission previously approved the listing and trading of the shares of the Target ETF. *See* Securities Exchange Act Nos. 91266 (March 5, 2021) 86 FR 13930 (March 11, 2021) (SR–NYSEArca–2020–104) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Stance Equity ESG Large Cap Core ETF Under NYSE Arca Rule 8.601–E) (''Approval Order''); and 90665 (December 15, 2020) 85 FR 83129 (December 21, 2020) (SR–NYSEArca-2020–104) (Notice of Filing of Proposed Rule Change To List and Trade Shares of the Stance Equity ESG Large Cap Core ETF Under NYSE Arca Rule 8.601–E) (''Notice''). (The Approval Order and the Notice are referred to collectively herein as the ''Releases'').

[6] The Issuer is registered under the Investment Company Act of 1940 (the ''1940 Act''). On November 23, 2020, the Issuer filed a registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Target ETF (File Nos. 033–20827 and 811– 05518) (''Registration Statement''). The Issuer filed an Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–15165), dated September 28, 2020 (''Application''). The Issuer filed an amended Application on December 10, 2020, and a second amended Application on January 15, 2021. On February 26, 2021, the Commission issued an order (''Exemptive Order'') under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 34215, February 26, 2021).

[7] *See https://www.sec.gov/Archives/edgar/data/891944/000089706922000614/cmw453.htm.*

[8] *See* note 4 *supra.*

[9] Stance Capital, LLC (''Stance Capital''), a sub-advisor to the Target ETF, represents that it will continue the day-to-day management of the Acquiring ETF's investment portfolio following the Reorganization in the manner described in the proposed rule change for the Target ETF referenced in note 4, *supra,* and the changes described herein will not be implemented until this proposed rule change is operative.

[10] Hennessy Advisors, Inc. is an SEC-registered investment adviser. Hennessy Advisors is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) Hennessy Advisors, Inc. becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a ''fire wall'' with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Acquiring ETF's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Acquiring ETF's Actual Portfolio and/or Proxy Portfolio or changes thereto. In addition, any person related to the adviser, sub-adviser(s), or the Acquiring ETF who make decisions pertaining to the Acquiring ETF's Actual Portfolio or the Proxy Portfolio or has access to non-public information regarding the Acquiring ETF's Actual Portfolio and/or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Acquiring ETF's Actual Portfolio and/or the Proxy Portfolio or changes thereto. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Advisers and their related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above. Hennessy Advisors filed an Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–15387), dated September 21, 2022 (''Hennessy Application''). Hennessy Advisors filed an amended Hennessy Application on November 3, 2022, and a second amended Hennessy Application on November 16, 2022. On December 14, 2022, the

Target ETF's sub-advisers, Stance Capital and Vident Investment Advisory, LLC will remain the sub-advisers for the Acquiring ETF following the Reorganization.

The investment objective of the Acquiring ETF will remain unchanged. In addition, the Acquiring ETF's portfolio meets and will continue to meet the representations regarding the Target ETF's investments as described in the Releases.[11] Except for the changes noted above, all other representations made in the Releases remain unchanged. As stated above and in the Releases, shares of the Acquiring ETF shall also conform to the initial and continued listing criteria under Rule 8.601–E.

2. *Statutory Basis*

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[12] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest. Hennessy Funds Trust has filed the Proxy Statement describing the Reorganization pursuant to which, following approval of the Target ETF's shareholders and closing of the Reorganization, all of the assets of the Stance Equity ESG Large Cap Core ETF will be transferred to a corresponding fund of the Hennessy Funds Trust, which will have the name Hennessy Stance ESG Large Cap ETF. This filing proposes to reflect organizational and administrative changes that would be implemented as a result of the Reorganization, including changes to the trust entity issuing shares of the Target ETF and the adviser to the Target ETF. As noted above, Hennessy Advisors, Inc. is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) Hennessy Advisors, Inc. becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a ''fire wall'' with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Acquiring ETF's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Acquiring ETF's Actual Portfolio and/or Proxy Portfolio or changes thereto. According to the Proxy Statement, the investment objective of the Acquiring ETF will be the same as that of the Target ETF following the Reorganization. The Exchange believes these changes will not adversely impact investors or Exchange trading. In addition, the Acquiring ETF's portfolio meets and will continue to meet the representations regarding the Target ETF's investments as described in the Releases. Except for the changes noted above, all other representations made in the Releases remain unchanged. As stated above and in the Releases, shares of the Acquiring ETF shall also conform to the initial and continued listing criteria under Rule 8.601–E.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change will not impose a burden on competition and will benefit investors and the marketplace by permitting continued listing and trading of shares of the Acquiring ETF following implementation of the changes described above that would follow the Reorganization, which changes would not impact the investment objective of the Acquiring ETF.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed changes reflect organizational and administrative changes that would be implemented as a result of the Reorganization, including changes to the trust entity issuing shares of the Target ETF and the investment adviser to the Target ETF, and that the proposed changes do not raise novel regulatory issues and would not affect the public interest or the protection of investors. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues.

Commission issued an order (''Hennessy Exemptive Order'') under the 1940 Act granting the exemptions requested in the Hennessy Application (Investment Company Act Release No. 34773, December 14, 2022). Shares of the Acquiring ETF are not currently listed and traded on the Exchange. The Exchange will not commence trading in shares of the Acquiring ETF until the Proxy Statement is effective.

[11] Pursuant to the Hennessy Application and Hennessy Exemptive Order, the permissible investments for the Acquiring ETF will continue to include only the following instruments: ETFs traded on a U.S. exchange, exchange-traded notes traded on a U.S. exchange, U.S. exchange-traded common stocks, U.S. exchange-traded preferred stocks, U.S. exchange-traded American Depositary Receipts, U.S. exchange-traded real estate investment trusts, U.S. exchange-traded commodity pools, U.S. exchange-traded metals trusts, U.S. exchange-traded currency trusts, and U.S. exchange-traded futures; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Acquiring ETF's Shares; exchange-traded futures that are traded on a U.S. futures exchange contemporaneously with the Acquiring ETF's Shares; and cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). The Acquiring ETF will also continue to not borrow for investment purposes, hold short positions, or purchase any securities that are illiquid investments at the time of purchase.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2022–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2022–84. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEARCA–2022–84 and should be submitted on or before January 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28196 Filed 12–27–22; 8:45 am]

BILLING CODE 8011–01–P

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96557; File No. SR–ICC–2022–013]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Collateral Risk Management Framework, ICC Treasury Operations Policies and Procedures, and ICC Liquidity Risk Management Framework

December 21, 2022.

I. Introduction

On October 24, 2022, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to formalize the Collateral Risk Management Framework (''CRMF'') and to amend both its Treasury Operations Policies and Procedures (''Treasury Policy'') and its Liquidity Risk Management Framework (''LRMF''). The proposed rule change was published for comment in the **Federal Register** on November 10, 2022.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Collateral Risk Management Framework, ICC Treasury Options Policies and Procedures, and the ICC Liquidity Risk Management Framework; Exchange Act Release No. 96237 (Nov. 4, 2022); 87 FR 67982 (Nov. 10, 2022) (File No. SR–ICC–2022–013) (''Notice'').

II. Description of the Proposed Rule Change

Background

ICC's Clearing Participants provide collateral to ICC to satisfy their margin and Guaranty Fund requirements. To manage the risk associated with fluctuations in the value of this collateral, ICC applies haircuts to the collateral that it accepts. These haircuts reduce the value of the collateral for ICC's risk management purposes. Overall, the haircuts are designed to account for potential decline in asset liquidation value during stressed market conditions. The CRMF would describe, in a quantitative manner, how ICC derives the collateral haircuts.

The overall purpose of the proposed rule change is to move the CRMF, the substance of which is currently found in Appendix 6 to Treasury Policy, into a separate, standalone document. Making the CRMF a separate, standalone document would allow ICC to treat the CRMF as a separate risk management model, subject to review and validation like ICC's other risk management models.

To accomplish this objective, the proposed rule change would: (i) delete Appendix 6 to the Treasury Policy; (ii) move the substance of the information found in Appendix 6 to a standalone document entitled the CRMF; and (iii) update references in the Treasury Policy and LRMF to refer to the CRMF, rather than Appendix 6 to the Treasury Policy. The changes are discussed for each of the Treasury Policy, CRMF, and LRMF as follows.

Treasury Policy

As discussed above, Appendix 6 to the Treasury Policy currently has information that the proposed rule change would move into the CRMF. Thus the proposed rule change would first delete Appendix 6 from the Treasury Policy and would move this information to the CRMF (as discussed below).

CRMF

The CRMF would describe, in a quantitative manner, how ICC derives collateral haircuts, which ICC uses to manage the risk of fluctuations in the prices of collateral posted by Clearing Participants. As discussed above, the CRMF would include the substance of

the information that is currently found in Appendix 6 of the Treasury Policy.[4] The proposed rule change would move this information into Sections I and III of the CRMF, with minor updates to reflect the re-formatting of the CRMF as a standalone document.

In addition to this information from Appendix 6 of the Treasury Policy, the CRMF would include other information related to collateral risk management that is not currently found in Appendix 6. For example, Section IV would contain examples of how ICC would apply the methodology set out in the CRMF to arrive at haircuts for various types of collateral. Section V would present a list of referenced publications, which is also information not currently found in Appendix 6.

Because the CRMF would contain additional information that is not currently found in Appendix 6, and because the Commission is approving the CRMF as a separate document for the first time, the CRMF is described in its entirety as follows.

The CRMF is divided into six sections. Section I describes in general how ICC computes collateral haircuts. To compute collateral haircuts, ICC estimates both the 5-day 99% expected shortfall and the 2-day 99.9% Value-at-Risk, using the same time series. Of the two, ICC chooses the more conservative risk measure to establish the haircut factors that capture potential collateral value losses.

Section I further contains three subsections. Subsections I.a and I.b describe in more detail how ICC derives haircuts for collateral that is denominated in foreign currencies and for collateral that is sovereign debt. Subsection I.a describes a two-stage approach to account for the risk associated with fluctuations of collateral asset prices denominated in foreign currencies and the corresponding time series is used for collateral denominated in foreign currencies.[5] Subsection I.b describes how the fluctuations of the time to maturity yield rates are considered and how its corresponding time series are used for sovereign debt collateral. Subsection I.c describes how ICC arrives at a final haircut value, a process which includes rounding up to ensure stability and conservative bias.

Section II details one of the main components ICC's collateral risk model: the distribution that describes the realizations of the risk factor that in turn determines the price of a particular item of collateral.[6] For example, as is described in the CRMF, for FX markets, the actual FX rate is the determining risk factor, whereas for government bonds the determining risk factor is the implied yield. Section II in turn has five subsections that further describe the model framework and this distribution.

Subsection II.a details certain distribution assumptions appropriate for foreign exchange (''FX'') and fixed income (''FI'') assets on which the haircut methodology is based. Subsection II.b describes how parameter estimates are obtained and used to compute multi-day risk measures. Subsection II.c details how the variability of a risk factor is described for risk management purposes and presents the selected measure of variability for all considered time series. Subsection II.d portrays multi-period forecasting, which includes the analysis that is performed to extend one-day forecasts to multi-period forecasts. Subsection II.e details the methods to obtain risk measures that are used for haircut purposes.

Section III describes governance procedures relevant to the CRMF as well as a summary of the associated governance process. Upon the daily executions of collateral haircut factors, the Risk Department reviews the results, which are updated no less than monthly and the ICC Chief Risk Officer (''CRO'') has the discretion to update the haircut factors more often. The Risk Department would also conduct back-testing, at least quarterly, to review the statistical performance of the collateral haircut model. If the back-testing results show exceedances beyond the more conservative risk measure, then ICC's CRO and Risk Oversight Officer will determine whether to trigger subsequent remedial steps and consultations.

Section IV provides examples of the application of the methodology to FX and FI instruments. Overall these examples demonstrate the viability of the provide examples of the modeling approaches to various assets. Each of the examples documents a three-stage approach to estimate risk measures and corresponding haircut factors.

The final two sections, Section V and Section VI, provide referential background related to the document itself. Section V has a list of references and Section VI adds a revision history.

LRMF

The LRMF changes would be the most minor of the changes of the three policies subject to this rule change. More specifically, instead of referencing the Treasury Policy Appendix 6, the amended LRMF would reference the CRMF.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[7] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[8] and Rules 17Ad–22(e)(2)(i), 17Ad–22(e)(2)(v), and 17Ad–22(e)(5) thereunder.[9]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions.[10] Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed rule change is consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions at ICC because it would promote transparency and effective operation of the collateral assets risk management model.

The Commission believes that unifying information on ICC's collateral assets risk management methodology in one document with more detail will improve transparency while promoting effective operation of the model. The CRMF would include information from Appendix 6 of the Treasury Policy but also would expand on it. Duplicative information would be removed from the Treasury Policy and references in the Treasury Policy and the LRMF would be updated to the CRMF as needed. Additional information would be provided regarding the collateral assets risk management model and methodology that would facilitate replication and validation by third parties. Additional information would be included on relevant parameters, computations, equations, definitions, and figures to describe relevant processes, which the Commission believes would help ensure responsible parties effectively complete their

[4] *See* Notice, 87 FR 67982 at 67983 (detailing where components of Appendix 6 to the Treasury Policy would be relocated to within the CRMP).

[5] *Id.*

[6] *See* Notice, 87 FR 67982 at 67983.

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(2)(i), (e)(2)(v), and (e)(5).

[10] 15 U.S.C. 78q–1(b)(3)(F).

assigned duties. The Commission believes that the proposed clarifications to ICC's rules would improve transparency and readability by avoiding unnecessary repetition and duplication in the Treasury Policy, which could help avoid confusion and potential future inconsistencies between policies. The Commission therefore believes that, by unifying and expanding the detail in the CRMF for the collateral assets risk management methodology in the CRMF, the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[11]

B. Consistency With Rule 17Ad–22(e)(2)(i) and (v)

Rules 17Ad–22(e)(2)(i) and (v) [12] require ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. As discussed above, the proposed changes strengthen the governance procedures related to ICC's collateral assets risk management approach by memorializing associated governance processes and procedures in the CRMF. The CRMF details governance procedures associated with haircut factor updates, implementation, and review, including the responsible ICC personnel, department, group, or committee. The Commission therefore believes the proposed rule change should help ensure that ICC maintains policies and procedures that are reasonably designed to provide for clear and transparent governance arrangements and specify clear and direct lines of responsibility, consistent with Rule 17Ad–22(e)(2)(i) and (v).[13]

C. Consistency With Rule 17Ad–22(e)(5)

Rule 17Ad–22(e)(5) [14] requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposure; and require a review of the sufficiency of its collateral haircuts and concentration limits to be performed not less than annually. ICC's proposed changes would not change which assets it accepts as collateral. In addition to ICC's existing collateral requirements, the CRMF would provide a framework for setting and enforcing collateral haircuts. The Commission believes the additional procedures defined in Section III of the CRMF would help ensure that ICC establishes, reviews, and updates haircuts within defined intervals, and more frequently if deemed necessary. As described above, collateral haircut factor estimations are executed daily, and the ICC Risk Department reviews the results and determines at least monthly whether it will made any updates to collateral haircuts. Haircut factors can be updated more frequently at the discretion of the CRO or designee. The Commission therefore finds the proposed rule change is consistent with Rule 17Ad–22(e)(5).[15]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act [16] and Rules 17Ad–22(e)(2)(i) and (v) and 17Ad–22(e)(5) thereunder.[17]

It is therefore ordered pursuant to Section 19(b)(2) of the Act [18] that the proposed rule change (SR–ICC–2022–013), be, and hereby is, approved.[19]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28195 Filed 12–27–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[13] *Id.*

[14] 17 CFR 240.17Ad–22(e)(5).

[15] *Id.*

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 17 CFR 240.17Ad–22(e)(2)(i), (e)(2)(v), and (e)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96564; File No. SR–MRX–2022–28]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 6 To Add Port Fees

December 21, 2022.

On December 8, 2022, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to assess port fees.

On December 16, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–28).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[3]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28200 Filed 12–27–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96563; File No. SR–MRX–2022–29]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6

December 21, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend MRX's Pricing Schedule at Options 7, Section 6.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

MRX proposes to amend its Pricing Schedule at Options 7, Section 6, Ports and Other Services, to assess port fees, which were not assessed until this year. Prior to this year, MRX did not assess its Members any port fees. MRX launched its options market in 2016 [3] and Members did not pay any port fees until 2022.

Newly-opened exchanges often charge no fees for certain services, such as ports, in order to attract order flow to an exchange, and later amend their fees to charge for those services.[4] The proposed port fees within Options 7, Section 6, Ports and Other Services, are described below.

The Exchange proposes to amend fees for the following ports within Options 7, Section 6: (1) FIX,[5] (2) SQF; [6] (3) SQF Purge; [7] (4) OTTO; [8] (5) CTI; [9] (6) FIX DROP; [10] and Disaster Recovery Ports.[11] Currently, no fees are being assessed for these ports.

The Exchange proposes to assess no fee for the first FIX Port obtained by an Electronic Access Member [12] or the first SQF Port obtained by a Market Maker.[13] The Exchange proposes to assess a FIX Port Fee of $650 per port, per month, per account number [14] for each subsequent port beyond the first port. The Exchange proposes to assess an SQF Port Fee of $1,250 per port, per month for each subsequent port beyond the first port.[15] The Exchange proposes to assess an SQF Purge Port Fee of $1,250 per port, per month. The Exchange proposes to assess an OTTO Port Fee of $650 per port, per month, per account number. The Exchange proposes to assess a CTI Port Fee and a FIX Drop Port Fee of $650 per port, per month.

The Exchange proposes to assess no fee for the first FIX Disaster Recovery Port obtained by an Electronic Access Member [16] or the first SQF Disaster

[3] The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR–MRX–2022–04) instituting fees for membership, ports and market data. On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership, ports and market data. SR–MRX–2022–06 replaced the port fees set forth in SR–MRX–2022–04. On July 1, 2022, SR–MRX–2022–06 was withdrawn and replaced with SR–MRX–2022–09. On August 25, 2022, SR–MRX–2022–09 was withdrawn and replaced with SR–MRX–2022–12. On October 11, 2022, SR–MRX–2022–12 was withdrawn and replaced with SR–MRX–2022–20. On December 8, 2022, SR–MRX–2022–20 was withdrawn and replaced with SR–MRX–2022–28. The instant filing replaces SR–MRX–2022–28 which was withdrawn on December 16, 2022.

[4] *See, e.g.,* Securities Exchange Act Release No 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the Initial Fee Schedule and Other Fees for MEMX LLC).

[5] ''Financial Information eXchange'' or ''FIX'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages. *See* Supplementary Material .03(a) to Options 3, Section 7.

[6] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. *See* Supplementary Material .03(c) to Options 3, Section 7.

[7] SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book.

[8] ''Ouch to Trade Options'' or ''OTTO'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. *See* Supplementary Material .03(b) to Options 3, Section 7. Unlike FIX, which offers routing capability, OTTO does not permit routing.

[9] Clearing Trade Interface (''CTI'') is a real-time cleared trade update message that is sent to a Member after an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement (''CMTA'') or The Options Clearing Corporation (''OCC'') number; (ii) badge or mnemonic; (iii) account number; (iv) information which identifies the transaction type (*e.g.,* auction type) for billing purposes; and (v) market participant capacity. *See* Options 3, Section 23(b)(1). CTI Ports are not required for an MRX Member to meet its regulatory obligations. Members receive free daily reports listing trade executions from the Exchange.

[10] FIX DROP is a real-time order and execution update message that is sent to a Member after an order been received/modified or an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections. *See* Options 3, Section 23(b)(3). FIX DROP Ports are not required for an MRX Member to meet its regulatory obligations. Members receive free daily reports listing open orders and trade executions from the Exchange.

[11] Disaster Recovery ports provide connectivity to the Exchange's disaster recovery data center, to be utilized in the event the Exchange should failover during a trading day.

[12] The first FIX Port would be provided to each Electronic Access Member. The term ''Electronic Access Member'' or ''EAM'' means a Member that is approved to exercise trading privileges associated with EAM Rights. *See* General 1, Section 1(a)(6). Also, the first SQF Port would be provided to each Market Maker. The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[13] The first SQF Port would be provided to each Market Maker. The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[14] An ''account number'' shall mean a number assigned to a Member. Members may have more than one account number. *See* Options 1, Section 1(a)(1). Account numbers are free on MRX.

[15] SQF's Port Fees are assessed a higher dollar fee as compared to FIX and OTTO ports ($1,250 vs. $650) because the Exchange has to maintain options assignments within SQF and manage quoting traffic. Market Makers may utilize SQF Ports in their assigned options series. Market Maker badges are assigned to specific SQF ports to manage the option series in which a Market Maker may quote. Additionally, because of quoting obligations provided for within Options 2, Section 5, Market Makers are required to provide liquidity in their assigned options series which generates quote traffic. The Exchange notes because of the higher fee, SQF ports are billed per port, per month while FIX and OTTO ports are billed per port, per month, per account number. Members may have more than one account number.

[16] The first FIX Port would be provided to each Electronic Access Member. The term ''Electronic Access Member'' or ''EAM'' means a Member that is approved to exercise trading privileges associated with EAM Rights. *See* General 1, Section 1(a)(6). Also, the first SQF Port would be provided to each Market Maker. The term ''Market Makers'' refers to

Continued

Recovery Port obtained by a Market Maker.[17] The Exchange proposes to assess each additional FIX Disaster Recovery Port and each additional SQF Disaster Recovery Port a fee of $50 per port, per month, per account number. Additionally, the Exchange proposes to assess a Disaster Recovery Fee for SQF Purge and OTTO Ports of $50 per port, per month, per account number. Finally, the Exchange proposes to assess a Disaster Recovery Fee for CTI Ports and FIX DROP Ports of $50 per port, per month.

The OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports[18] are available to all Electronic Access Members, and will be subject to a monthly cap of $7,500.

The SQF Port and the SQF Purge Port are available to all Market Makers, and will be subject to a monthly cap of $17,500.[19]

The Exchange is not amending the Nasdaq MRX Depth of Market, Nasdaq MRX Order Feed, Nasdaq MRX Top Quote Feed, Nasdaq MRX Trades Feed, or Nasdaq MRX Spread Feed Ports; all of these aforementioned ports will continue to be assessed no fees. Additionally, as is the case today, the Disaster Recovery Ports for the Nasdaq MRX Depth of Market, Nasdaq MRX Order Feed, Nasdaq MRX Top Quote Feed, Nasdaq MRX Trades Feed and Nasdaq MRX Spread Feed Ports will not be assessed a fee.

Order and Quote Entry Protocols

Only one FIX order protocol is required for an MRX Member to submit orders into MRX and to meet its regulatory requirements.[20] The Exchange will provide each Electronic Access Member[21] the first FIX Port at no cost to submit orders into MRX. Only one account number is necessary to transact an options business on MRX and account numbers are available to Members at no cost.

Only one SQF quote protocol is required for an MRX Market Maker to submit quotes into MRX and to meet its regulatory requirements.[22] The Exchange will provide each Market Maker the first SQF Port at no cost to submit quotes into MRX. A quoting protocol, such as SQF, is only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1.

Only MRX Members may utilize ports on MRX. Any market participant that sends orders to a Member would not need to utilize a port. The Member can send all orders, proprietary and agency, through one port to MRX. Members may elect to obtain multiple account numbers to organize their business, however only one account number and one port for orders and one port for quotes is necessary for a Member to trade on MRX. All other ports offered by MRX are not required for an MRX Member to meet its regulatory obligations.

MRX also offers an OTTO protocol.[23] MRX Members utilizing the first FIX Port offered at no cost do not need to purchase an OTTO Port to meet their regulatory obligations.

Further, while only one FIX protocol is necessary to submit orders into MRX, Members may choose to purchase a greater number of order entry ports, depending on that Member's business model.[24] To the extent that Electronic Access Members chose to utilize more than one FIX Port, the Electronic Access Member would be assessed $650 per port, per month, per account number for each subsequent port beyond the first port. To the extent that Market Makers chose to utilize more than one SQF Port, the Market Maker would be assessed $1,250 per port, per month for each subsequent port beyond the first port. Additionally, to the extent a Member expended more than $7,500 for FIX Ports or more than $17,500 for SQF Ports, the Exchange would not charge an MRX Member for additional FIX or SQF Ports, respectively, beyond the cap.

Other Protocols

The Exchange's proposal to offer an SQF Purge Port[25] for $1,250 per port, per month is not required for an MRX Member to meet its regulatory obligations.

Disaster Recovery Ports

With respect to Disaster Recovery Ports, the Exchange proposes to assess no fee for the first FIX Disaster Recovery Port obtained by an Electronic Access Member or the first SQF Disaster Recovery Port obtained by a Market Maker. The Exchange proposes to assess no fees for these ports to provide Members with continuous access to MRX in the event of a failover at no cost. Electronic Access Members only require one FIX Disaster Recovery Port to submit orders in the event of a failover. Market Makers only require one SQF Disaster Recovery Port to submit quotes in the event of a failover. Electronic Access Members may elect to purchase additional FIX Disaster Recovery Ports for $50 per port, per month, per account number. Market Makers may elect to purchase additional SQF Disaster Recovery Ports for $50 per port, per month, per account number. The additional FIX and SQF Disaster Recovery Ports are not necessary to connect to the Exchange in the event of a failover because the Exchange has provided Members with a FIX Disaster Recovery Port and an SQF Disaster Recovery Port at no cost. Additional FIX and SQF Disaster Recovery Ports are not necessary for an MRX Member to meet its regulatory obligations.[26]

The Exchange's proposal to offer Disaster Recovery Ports for SQF Purge Ports and OTTO Ports for $50 per port, per month, per account number and Disaster Recovery Ports for CTI Ports and FIX DROP Ports for $50 per port, per month is not required for an MRX Member to meet its regulatory obligations. The proposed Disaster Recovery Port fees are intended to encourage Members to be efficient when purchasing Disaster Recovery Ports.

Finally, in the event that an MRX Member elects to subscribe to multiple ports, the Exchange offers a monthly cap beyond which a Member would be assessed no additional port fees in a given month. As noted above, the SQF Port and the SQF Purge Port are subject to a monthly cap of $17,500 and the

''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[17] The first SQF Port would be provided to each Market Maker. The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[18] This includes FIX, SQF, SQF Purge, OTTO, CTI and FIX Drop Disaster Recovery Ports.

[19] Only Market Makers may quote on MRX. The Exchange is proposing non-substantive technical amendments to add commas within the ''Production'' column of the proposed rule text to separate terms.

[20] MRX Members have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations.

[21] A Market Maker would receive both a FIX Port and an SQF Port.

[22] MRX Market Makers have intra-day quoting requirements. *See* Options 2, Section 5(e). Additionally, PMMs must submit a Valid Width Quote each day to open their assigned options series. *See* Options 3, Section 8(c)(1) and 8(c)(3).

[23] *See* note 8, *supra.*

[24] For example, a Member may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[25] *See* note 7, *supra.*

[26] *See* General 2, Section 12(b).

OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports are subject to a monthly cap of $7,500.

These different protocols are not all necessary to conduct business on MRX; a Member may choose among protocols based on their business workflow. The Exchange's proposal to offer the first FIX and SQF Port at no cost as well as the first FIX and SQF Disaster Recovery Ports at no cost would allow MRX Members to submit orders and quotes into MRX at no cost while meeting their regulatory obligations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[28] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

MRX proposes to amend its Pricing Schedule at Options 7, Section 6, Ports and Other Services, to assess port fees, which were not assessed until this year. Prior to this year, MRX did not assess its Members any port fees. MRX launched its options market in 2016[29] and Members did not pay any port fees until 2022. Of the 16 operating options exchanges, MRX has the smallest market share at 1.37% as of November 2022.

The Exchange notes that, as of May 2, 2022, one MRX Member, who was also a Market Maker, cancelled all of their ports (1 SQF Port and 1 OTTO Port) to avoid being assessed any MRX port fees.[30] As of July 1, 2022, the Exchange did not assess MRX Members for their first SQF Port or FIX Port. Further, in October 2022, an additional MRX Member, who is also a Market Maker, cancelled 3 SQF Ports.[31]

Proposed Port Fees Are Reasonable, Equitable and Not Unfairly Discriminatory

Only one FIX order protocol is required for an MRX Member to submit orders into MRX and to meet its regulatory requirements[32] at no cost while meeting its regulatory requirements. The Exchange will provide each Electronic Access Member the first FIX Port at no cost to submit orders into MRX. Only one account number is necessary to transact an options business on MRX and account numbers are available to Members at no cost.

Only one SQF quote protocol is required for an MRX Market Maker to submit quotes into MRX and to meet its regulatory requirements[33] at no cost while meeting its regulatory requirements. The Exchange will provide each Market Maker the first SQF Port at no cost to submit quotes into MRX. A quoting protocol, such as SQF, is only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1.

The Exchange proposes to offer the first FIX and SQF Port at no cost in addition to the first FIX Disaster Recovery Port and the first SQF Disaster Recovery Port at no cost to meet its regulatory requirements. As noted above, Members may freely choose to rely on one or many ports, depending on their business model.

The Exchange's proposal is reasonable, equitable and not unfairly discriminatory as MRX is providing MRX Electronic Access Members the first FIX Port to submit orders and MRX Market Makers the first SQF Port to submit quotes to MRX, at no cost, in addition to providing the first FIX Disaster Recovery Port and the first SQF Disaster Recovery Port at no cost. These ports, which are offered at no cost, would allow an MRX Member to meet its regulatory requirements. All other ports offered by MRX are not required for an MRX Member to meet its regulatory obligations. Therefore, for the foregoing reasons, it is reasonable to assess no fee for the first FIX Port obtained by an Electronic Access Member or the first SQF Port obtained by a Market Maker as an MRX Member is able to meet its regulatory requirements with these ports.

Further it is equitable and not unfairly discriminatory to assess no fee for the first FIX Port to Electronic Access Members as all Electronic Access Members would be entitled to the first FIX Port at no cost. Also, it is equitable and not unfairly discriminatory to assess no fee for the first SQF Port to Market Makers as all Market Makers would be entitled to the first SQF Port at no cost. With this proposal, MRX Members may organize their business in such a way as to submit orders and/or quotes continuously to MRX at no cost.

The Exchange's proposal to assess Members $650 per port, per month, per account number for FIX Ports beyond the first port and $1,250 per port, per month for SQF Ports beyond the first port is reasonable because these ports are not required for a member to meet its regulatory requirements. Members only require one FIX Port to submit orders to MRX and one SQF Port to submit quotes to MRX. Members electing to subscribe to more than one FIX or SQF Port are choosing the additional ports to accommodate their business model. Additionally, to the extent a Member expended more than $7,500 for FIX Ports or more than $17,500 for SQF Ports, the Exchange would not charge an MRX Member for additional FIX or SQF Ports beyond the cap. The fees for the proposed additional FIX and SQF Ports are equitable and not unfairly discriminatory because any Member may elect to subscribe to additional ports. Electronic Access Members would be subject to the same fees for FIX Ports and Market Makers would be subject to the same fees for SQF Ports. Unlike other market participants, Market Makers are required to provide continuous two-sided quotes on a daily basis,[34] and are subject to various obligations associated with providing liquidity.[35] Also, as noted herein, account numbers are available on MRX at no cost.

The Exchange's proposal to assess $650 per port, per month, per account number for an OTTO Port is reasonable because OTTO is not required for a

[27] *See* 15 U.S.C. 78f(b).

[28] *See* 15 U.S.C. 78f(b)(4) and (5).

[29] The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR–MRX–2022–04) instituting fees for membership, ports and market data. On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership, ports and market data. SR–MRX–2022–06 replaced the port fees set forth in SR–MRX–2022–04. On July 1, 2022, SR–MRX–2022–06 was withdrawn and replaced with SR–MRX–2022–09. On August 25, 2022, SR–MRX–2022–09 was withdrawn and replaced with SR–MRX–2022–12. On October 11, 2022, SR–MRX–2022–12 was withdrawn and replaced with SR–MRX–2022–20. On December 8, 2022, SR–MRX–2022–20 was withdrawn and replaced with SR–MRX–2022–28. The instant filing replaces SR–MRX–2022–28 which was withdrawn on December 16, 2022.

[30] MRX originally filed to assess a fee for all FIX Ports.

[31] This Member informed the Exchange that they elected to utilize less ports in response to the current port pricing. This Member had a total of 8 SQF Ports at the time they instructed MRX to cancel 3 of those ports.

[32] MRX Members have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations. *See* Rule 611 of Regulation NMS; 17 CFR 242.611 and FINRA Rule 5310.

[33] MRX Members have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations. MRX Market Makers have intra-day quoting requirements. See Options 2, Section 5(e). PMMs must submit a Valid Width Quote each day to open their assigned options series. *See* Options 3, Section 8(c)(1) and 8(c)(3).

[34] *See* MRX Options 2, Section 5.

[35] *See* MRX Options 2, Section 4.

member to meet its regulatory requirements. The Exchange is offering the first FIX Port at no cost to submit orders to MRX. In addition to the FIX Port, all Members may elect to purchase OTTO to submit orders to MRX. MRX Members utilizing the FIX Port, which is offered at no cost, do not need to utilize OTTO.

The Exchange's proposal to offer an SQF Purge Port for $1,250 per port, per month is reasonable because this port is not required for a member to meet its regulatory requirements. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. The proposed SQF Purge Port is equitable and not unfairly discriminatory because any Market Maker may elect to purchase an SQF Purge Port and would be subject to the same fee.

The Exchange's proposal to assess $650 per port, per month for CTI Ports and FIX DROP Ports is reasonable because these ports are not required for a member to meet its regulatory requirements. The proposed CTI and FIX DROP Ports are equitable and not unfairly discriminatory because any Member may elect to purchase an additional CTI Port or FIX DROP Port and would be subject to the same fee.

The Exchange's proposal to assess no fee for the first FIX Disaster Recovery Port or the first SQF Disaster Recovery Port is reasonable because it will provide Members with continuous access to MRX in the event of a failover, at no cost and allow MRX Members to meet their regulatory obligations. Further it is equitable and not unfairly discriminatory to assess no fee for the first FIX Disaster Recovery Port to Electronic Access Members as all Electronic Access Members would be entitled to the first FIX Disaster Recovery Port at no cost. Also, it is equitable and not unfairly discriminatory to assess no fee for the first SQF Disaster Recovery Port to Market Makers as all Market Makers would be entitled to the first SQF Disaster Recovery Port at no cost.

The Exchange's proposal to assess Members $50 per port, per month, per account number for additional FIX Disaster Recovery Ports beyond the first port offered at no cost and $50 per port, per month, per account number for additional SQF Disaster Recovery Ports beyond the first port at no cost is reasonable because these ports allow MRX Members to meet their regulatory obligations. Members only require one FIX Disaster Recovery Port to submit orders to MRX in the event of a failover and one SQF Disaster Recovery Port to submit quotes to MRX in the event of a failover. Additionally, to the extent a Member expended more than $7,500 for Disaster Recovery Ports, the Exchange would not charge an MRX Member for additional Disaster Recovery Ports beyond the cap. The fees for the proposed additional FIX and SQF Disaster Recovery Ports are equitable and not unfairly discriminatory because any Member may elect additional ports and would be subject to the same fees.

The Exchange's proposal to offer Disaster Recovery Ports for SQF Purge Ports, and OTTO Ports at $50 per port, per month, per account number and CTI Ports, and FIX DROP Ports for $50 per port, per month is reasonable because these ports allow MRX Members to meet their regulatory obligations. The proposed Disaster Recovery Port fees are intended to encourage Members to be efficient when purchasing Disaster Recovery Ports. The proposed Disaster Recovery Ports are equitable and not unfairly discriminatory because any Member may elect to purchase an additional Disaster Recovery Port and would be subject to the same fee, depending on the port.

Finally, in the event that an MRX Member elects to subscribe to multiple ports, the Exchange offers a monthly cap beyond which a Member would be assessed no additional fees for month. As noted above, the SQF Port and the SQF Purge Port are subject to a monthly cap of $17,500 and the OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports are subject to a monthly cap of $7,500. These caps are reasonable because they allow Members to limit their fees beyond a certain level if they elect to purchase multiple ports in a given month. The caps are also equitable and not unfairly discriminatory because any Member will be subject to the cap, provided they exceeded the appropriate dollar amount in a given month.

The proposed port fees are similar to fees assessed today by GEMX, except that GEMX does not offer the first FIX and SQF Port at no cost, nor does GEMX offer the first FIX Disaster Recovery Port or the first SQF Disaster Recovery Port at no cost.[36] By way of comparison, ISE assessed fees for ports[37] in 2019 while offering the same suite of functionality as MRX, with a limited exception.[38] Cboe[39] port fees are within the range of the proposed fees. While Cboe does not offer the first order and quote entry port at no cost or Disaster Recovery Ports at no cost, it tiers its BOE and FIX Logical ports and each subsequent port fee is lower than MRX's port fees. MRX's FIX DROP Port Fee is lower than Cboe's DROP Logical Port Fee.[40] Cboe does not cap its ports as MRX has proposed herein. BOX port fees[41] are within the range of the proposed fees. While BOX does not offer the first order and quote entry port at no cost or Disaster Recovery Ports at no cost, it tiers its FIX and SAIL port fees and each subsequent port fee is lower than MRX's port fees, although the fees are not capped as proposed herein. MRX's FIX DROP Port Fee is higher than BOX's Drop Copy Port Fee.[42] MIAX port fees[43] are within the range of the proposed fees. MRX MEI Port users are allocated two (2) Full Service MEI Ports and two (2) Limited Service MEI Ports per matching engine

[36] *See* GEMX Options 7, Section 6.C. (Ports and Other Services).

[37] Since 2019, ISE has assessed the following port fees: a FIX Port Fee of $300 per port, per month, per mnemonic, an SQF Port Fee and SQF Purge Port Fee of $1,100 per port, per month, an OTTO Port Fee of $400 per port, per month, per mnemonic with a monthly cap of $4,000, a CTI Port Fee and FIX DROP Port Fee of $500 per port, per month, per mnemonic. *See* Securities Exchange Act Release No. 82568 (January 23, 2018), 83 FR 4086 (January 29, 2018) (SR–ISE–2018–07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Assess Fees for OTTO Port, CTI Port, FIX Port, FIX Drop Port and Disaster Recovery Port Connectivity). Of note, ISE assessed port fees prior to 2019 as well.

[38] *See* note 41, *supra.*

[39] Cboe assesses a fee of $750 per port up to 5 BOE/FIX Logical Ports, and $800 per port for over 5 BOE/FIX Logical Ports. *See* Cboe's Fees Schedule.

[40] Cboe assesses $750 for Drop Logical Ports and $850 for Purge Ports. *See* Cboe's Fees Schedule.

[41] BOX assesses tiered FIX Port Fees as follows: $500 per port per month for the first FIX Port, $250 per port per month for FIX Ports 2–5 and $150 per port per month for over 5 FIX Ports. BOX assesses $1000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port. *See* BOX's Fee Schedule.

[42] BOX assesses Drop Copy Port Fees of $500 per port per month for each month a Participant is credentialed to use a Drop Copy Port. Drop Copy Port Fees will be capped at $2,000 per month. *See* BOX's Fee Schedule.

[43] MIAX tiers its FIX Port fees as follows: $550 per month for the 1st FIX Port, $350 per month per port for the FIX Ports 2 through 5 and $150 per month for over 5 FIX Ports. MIAX tiers its MEI Port Fees and assesses fees per number of classes and as a percentage of National Average Daily Volume. MEI Port fees range from $5,000 to $20,500 per month. The applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement. However, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by The Options Clearing Corporation in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable. MIAX will assess monthly MEI Port Fees on Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. *See* MIAX's Fee Schedule.

to which they connect.[44] A MIAX Market Maker may request and be allocated two (2) Purge Ports per matching engine to which it connects via a Full Service MEI Port.[45] MIAX assesses a Real-Time Clearing Trade Drop Port Fee of $0.0030 per executed contract side per month.[46] MIAX assesses a FIX Drop Copy Port fee of $500 per month [47] which is lower than MRX's proposed fee. NYSE Arca port fees [48] are within the range of the proposed fees. For each order/quote entry port utilized, NYSE Arca Market Makers may utilize, free of charge, one port dedicated to quote cancellation or ''quote takedown,'' which port(s) will not be included in the count of order/quote entry ports utilized.[49] NYSE ARCA assesses a DROP Copy Port fee of $500 per port per month [50] which is lower than MRX's proposed fee.[51]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any intermarket burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes its proposal to offer the first FIX and SQF Ports for free, as well as the first Disaster Recovery version of these ports, permits MRX to set fees, similar to other options markets, while continuing to allow MRX Members to meet their regulatory obligations. MRX's offering would permit Electronic Access Members and Market Makers the ability to submit orders and quote to MRX at no cost. The remainder of the port offerings (additional FIX and SQF Ports, additional FIX and SQF Disaster Recovery Ports, SQF Purge Port, OTTO Port, CTI Port, FIX DROP Port and Disaster Recovery Ports for SQF Purge Ports, OTTO Ports, CTI Ports, and FIX DROP Ports) are not required for MRX Members to meet their regulatory obligations. The proposed fees do not impose an undue burden on competition because the Exchange would uniformly assess the port fees to all Members, as applicable, and would uniformly apply monthly caps.

Other markets have higher market share as compared to MRX (1.37%). The proposed port fees are similar to port fees assessed by other options markets as noted in this proposal as noted above.

With respect to the higher fees assessed for SQF Ports and SQF Purge Ports, the Exchange notes that only Market Makers may utilize these ports. Market Makers are required to provide continuous two-sided quotes on a daily basis,[52] and are subject to various obligations associated with providing liquidity.[53] As a result of these quoting obligations, the SQF Port and SQF Purge Port are designed to handle higher throughput to permit Market Makers to bundle orders to meet their obligations. The technology to permit Market Makers to submit a greater number of quotes, in addition to the various risk protections [54] afforded to these market participants when quoting, accounts for the higher SQF Port and SQF Purge Port fees.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[55] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2022–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2022–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments

[44] MEI Port Fees include MEI Ports at the Primary, Secondary and Disaster Recovery data centers. MIAX Market Makers may request additional Limited Service MEI Ports for which MIAX will assess MIAX Market Makers $100 per month per additional Limited Service MEI Port for each engine. *See* MIAX's Fee Schedule.

[45] For each month in which the MIAX Market Maker has been credentialed to use Purge Ports in the production environment and has been assigned to quote in at least one class, the Exchange will assess the MIAX Market Maker a flat fee of $1,500 per month, regardless of the number of Purge Ports allocated to the MIAX Market Maker. The MEI Port Fee for a Market Maker that trades solely in Proprietary Products is waived until December 31, 2022. *See* MIAX's Fee Schedule.

[46] *See* MIAX's Fee Schedule.

[47] *See* MIAX's Fee Schedule.

[48] NYSE Arca assesses a tiered order/quote entry port fee of $450 for the first 40 ports and $150 per port per month for the 41 ports or greater. For purpose of calculating the number of order/quote entry ports and quote takedown ports, NYSE ARCA aggregates the ports of affiliates. *See* NYSE Arca Options Fees and Charges.

[49] Any quote takedown port utilized by a NYSE Arca Market Maker that is in excess of the number of order/quote entry ports utilized will be counted and charged as an order/quote entry port. *See* NYSE Arca Options Fees and Charges.

[50] Only one fee per drop copy port shall apply, even if receiving drop copies from multiple order/quote entry ports and/or from NYSE Arca Equities). For the backup datacenter port, no fee shall apply if configured such that it is duplicative of another drop copy port of the same user. *See* NYSE Arca Options Fees and Charges.

[51] NYSE ARCA capped fees for Order/Quote Entry Ports, Quote Takedown Ports, and Drop Copy Ports are based on the total number of such ports an OTP Holder or OTP Firm is billed for in the month preceding the beginning of the NYSE ARCA's migration to the Pillar platform, during the Pillar Migration.

[52] *See* MRX Options 2, Section 5.

[53] *See* MRX Options 2, Section 4.

[54] *See* MRX Options 3, Section 15(a)(3). Market Makers are offered risk protections to permit them to manage their risk more effectively.

[55] 15 U.S.C. 78s(b)(3)(A)(ii).

received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2022–29 and should be submitted on or before January 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28199 Filed 12–27–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0344]

Convergent Capital Partners IV, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Convergent Capital Partners IV, LP, 9855 West 78th Street, Suite 320, Eden Prairie, MN 55344, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and 13 CFR 107.730, *Financings which Constitute Conflicts of Interest* of the Code of Federal Regulations. Convergent Capital Partners IV, LP, is seeking a written exemption from SBA for a proposed financing to Optimum Healthcare IT, LLC, 1300 Marsh Landing Parkway, Jacksonville Beach, FL 32250.

The financing is brought within the purview of 13 CFR 107.730(a)(4) of the Code of Federal Regulations because proceeds from the financing will discharge the obligation of Convergent Capital Partners III, LP, an Associate by virtue of Common Control as defined at 13 CFR 107.50.

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration.

[FR Doc. 2022–28212 Filed 12–27–22; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0349]

New Canaan Funding Mezzanine VII SBIC, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that New Canaan Funding Mezzanine VII SBIC, LP, 305 Fifth Avenue South, Suite 204 Naples, FL 34102, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concerns, has sought an exemption under section 312 of the Act and 13 CFR 107.730, *Financings which Constitute Conflicts of Interest* of the Code of Federal Regulations. New Canaan Funding Mezzanine VII SBIC, LP is proposing to provide financing to Safemark Inc., 200 W. Sand Lake Rd., Suite 800, Orlando, FL to support the company's growth.

The proposed transaction is brought within the purview of 13 CFR 107.730 of the Code of Federal Regulations because New Canaan Funding Mezzanine V SBIC, LP and New Canaan Funding Mezzanine V, LP, Associates of New Canaan Funding Mezzanine VII SBIC, LP, by virtue of Common Control as defined at 13 CFR 107.50, hold investments in Safemark, Inc. which will be discharged. In addition, New Canaan Funding Mezzanine VII SBIC, LP and its Associates did not previously invest in Safemark, Inc. at the same time and on the same terms and conditions as the proposed financing to Safemark, Inc.

Therefore, the proposed transaction is considered self-deal pursuant to 13 CFR 107.730 and requires a regulatory exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration.

[FR Doc. 2022–28213 Filed 12–27–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 11952]

U.S. Department of State Advisory Committee on Private International Law: Public Meeting on the Final Report of the Experts Group on Parentage/Surrogacy Project of the Hague Conference on Private International Law (HCCH).

The Department of State's Advisory Committee on Private International Law (ACPIL) will hold a virtual meeting to discuss the Hague Experts Group Final Report on Parentage/Surrogacy Project on Wednesday February 1, 2023. The meeting will be held in WebEx. The program is scheduled to run from 1 p.m. to 4 p.m.

The meeting will discuss the Final Report of the Experts' Group regarding the feasibility of one or more private international law instruments on legal parentage. The Final Report has been made available on the HCCH website at *https://assets.hcch.net/docs/6d8eeb81-ef67-4b21-be42-f7261d0cfa52.pdf.* The Report will be considered by the Council on General Affairs and Policy (CGAP) in March 2023, at which CGAP is expected to decide on whether future work on the project should be pursued. This Report presents the HCCH Experts' Group on Parentage/Surrogacy analysis and main conclusions on the feasibility of the core aspects of possible options for two separate binding legal instruments on legal parentage: one on legal parentage in general, and another on legal parentage established as a result of an international surrogacy arrangement (ISA) specifically. The purpose of the public meeting is to obtain the views of concerned stakeholders on the matters presented in the Report.

Members of the public may attend this virtual session and will be permitted to participate in the discussion. Virtual attendance is limited to 100 persons, so each member of the public that wishes to attend this session must provide: Name, contact information, and affiliation to *pil@state.gov,* not later than January 23, 2023. When you register, please indicate whether you require captioning. The

[56] 17 CFR 200.30–3(a)(12).

WebEx site and agenda will be forwarded to individuals who register. Requests made after that date will be considered but might not be able to be fulfilled.

Joseph N. Khawam,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2022–28178 Filed 12–27–22; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0103]

Commercial Driver's License Standards: Stevens Transport, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the exemption application from Stevens Transport, Inc. (Stevens). Stevens sought an exemption from the requirement that a commercial learner's permit (CLP) holder be accompanied by a commercial driver's license (CDL) holder with the proper CDL class and endorsements seated in the front seat of the vehicle while the CLP holder performs behind-the-wheel training on public roads or highways. The exemption allows a CLP holder who has passed the skills test but not yet received the CDL document to drive a Stevens commercial motor vehicle (CMV) accompanied by a CDL holder who is not necessarily in the passenger seat, provided the driver has documentation of passing the skills test. FMCSA has analyzed the exemption application and public comments and determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The exemption is effective from December 28, 2022 through December 28, 2027.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366–2722; *richard.clemente@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number ''FMCSA–2022–0103'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''View Related Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number ''FMCSA–2022–0103'' in the keyword box, click ''Search,'' and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

FMCSA's CDL regulations in 49 CFR 383.25 prescribe minimum conditions for behind-the-wheel training of a CLP holder. Section 383.25(a)(1) requires that a CLP holder at all times be accompanied by a CDL holder with the proper CDL class and endorsements. The CDL holder must be seated in the front seat of the CMV while the CLP holder performs behind-the-wheel training on public roads or highways.

Applicant's Request

Stevens requests an exemption from 49 CFR 383.25(a)(1) to allow CLP holders who have passed a CDL skills test, and are thus eligible to receive a CDL, to drive a CMV without a CDL holder always present in the front passenger seat. Stevens states that it recruits and develops driver candidates through the Stevens Driving Academy and several affiliated commercial driving schools that provide CDL training in a number of States, including Colorado, Louisiana, Georgia, Florida, and Tennessee. Stevens graduates approximately 3,150 new drivers each year.

Stevens asserts that without the exemption, it must choose either to wait for drivers to obtain the CDL credential from their home State before starting on-duty freight operations or to send the drivers home in an unproductive non-driving capacity. The result, according to Stevens, is supply chain inefficiency and a lost employment opportunity for a new driver. In addition, Stevens explains that States may take weeks to properly document and update the status of a new driver's license. This administrative waiting period has caused a significant burden on Stevens's operations.

IV. Method To Ensure an Equivalent or Greater Level of Safety

Stevens indicates that the exemption will result in a level of safety that is greater than the level of safety without the exemption. Stevens states that the only difference between a CLP holder who has passed the CDL skills test and a CDL holder is that the latter has obtained a hard copy of the CDL document from the home State's Department of Motor Vehicles (DMV). The practical result of the exemption is that CLP holders who have passed a CDL skills test are able to begin immediate and productive on-the-job training. According to Stevens, this will allow them to hone their recently acquired driving skill set and put them to work as a productive employee, as opposed to waiting for the CDL document. Stevens states that it will maintain proper, up-to-date records for all drivers in possession of a CLP who have passed the CDL skills test. A copy

of Stevens' application for exemption is available for review in the docket for this notice.

V. Public Comments

On June 14, 2022, FMCSA published notice of the Stevens application and requested public comment [87 FR 36034]. The Agency received four comments. The Owner-Operator Independent Driver's Association (OOIDA) opposed the exemption request, as OOIDA believes that Stevens failed to prove that a waiver would result in ''a level of safety equivalent to, or greater than, the level that would be achieved by the regulation.'' OOIDA commented that Stevens demonstrated only a desire to increase its productivity and profit at the risk of highway safety. OOIDA also commented that: (1) far too many new drivers are entering the trucking industry and driving on the nation's roads without the basic skills to safely operate a commercial vehicle and section 383.25(a)(1) is designed to properly ensure that inexperienced drivers will have sufficient training, instruction, and oversight as they learn the job; (2) Stevens's exemption request fails to explain how the CLP holder will be adequately mentored if the CDL holder is not in the passenger seat; and (3) the regulations requiring an experienced driver in the front seat with a permit holder were implemented with safety in mind, and FMCSA must continue bolstering training requirements in support of the Entry-Level Driver Training rule. Three other individual commenters also opposed the exemption request. One commenter stated that too many ''mega'' carriers put inexperienced, unqualified drivers on the road, while another commented that the risk of having an inexperienced driver behind the wheel without supervision is counterproductive to safety.

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated Stevens' application for exemption and the public comments and believes Stevens will achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. The premise of comments opposing the exemption is that CLP holders lack experience and are safer drivers when observed by a CDL driver trainer who is on duty and in the front seat of the vehicle. However, CLP holders who have passed the CDL skills test are eligible to obtain a CDL without further training. If these CLP holders had obtained their training and CLPs in their State of domicile, they could immediately obtain their CDL at the State driver licensing agency and begin driving a CMV without any on-board supervision. Because these drivers have passed the CDL skills test, the only thing necessary to obtain the CDL is to visit the DMV office in their State of domicile.

In addition, FMCSA has already granted this same exemption request—and in some instances, five-year renewals—for the following five other motor carriers: CRST Expedited, C.R. England, Inc., New Prime, Inc., Werner Enterprises, and Wilson Logistics [83 FR 53149; 87 FR 36360; 87 FR 38449; 87 FR 18855; 86 FR 11050].

The requested exemption is restricted to Stevens' CLP holders who have documentation that they have passed the CDL skills test. The exemption will enable these drivers to operate a CMV as a team driver without requiring the accompanying CDL holder be on duty and in the front seat while the vehicle is moving.

Terms and Conditions of the Exemption

When operating under this exemption, Stevens and its drivers are subject to the following terms and conditions:

(1) Stevens and its drivers must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR parts 350–399);

(2) The drivers must be in possession of a valid State driver's license, CLP with the required endorsements, and documentation that they have passed the CDL skills test;

(3) The drivers must not be subject to any out-of-service (OOS) order or suspension of driving privileges; and

(4) The drivers must be able to provide this exemption document to enforcement officials.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Stevens must notify FMCSA within 5 business days of any crash (as defined in 49 CFR 390.5) involving any of its CMVs operating under the terms of this exemption. The notification must include the following information:

(a) Name of the exemption: ''Stevens'';

(b) Date of the accident;

(c) City or town, and State, in which the accident occurred, or closest to the accident scene;

(d) Driver's name and license number;

(e) Vehicle number and State license number;

(f) Number of individuals suffering physical injury;

(g) Number of fatalities;

(h) The police-reported cause of the accident;

(i) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and

(j) The driver's total driving time and total on-duty time prior to the accident. Reports filed under this provision shall be emailed to *MCPSD@dot.gov.*

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. The exemption will be rescinded if: (1) Stevens and its drivers operating under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–28235 Filed 12–27–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0122]

Entry-Level Driver Training: State of Alaska; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant a two-year exemption to the State of Alaska from the limitations imposed by the commercial driver's license (CDL) regulations on the State's ability to issue restricted CDLs. The exemption allows the State to waive specified portions of the CDL skills test for drivers in 14 defined geographical areas that lack infrastructure to allow completion of the full skills test. Drivers who receive a restricted CDL under the provisions of this exemption are also

exempt from the Entry-Level Driver Training (ELDT) regulations. FMCSA concludes that granting the exemption, subject to the terms and conditions set forth below, is likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained absent the exemption.

DATES: The exemption is effective from December 28, 2022 through December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366–2722; *richard.clemente@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number ''FMCSA–2022–0122'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''View Related Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number ''FMCSA–2022–0122'' in the keyword box, click ''Search,'' and choose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

Under 49 CFR 383.3(e) the State of Alaska may waive certain knowledge and skills tests requirements and issue restricted CDLs, subject to certain conditions. To be eligible for a restricted CDL under 49 CFR 383.3(e), which is not valid outside Alaska, drivers must operate exclusively over roads that are not connected to the State highway system and are not connected to any highway or vehicular way with an average daily traffic volume greater than 499 (§ 383.3(e)(2)). The Federal Highway Administration, FMCSA's predecessor agency, set the daily traffic volume limit at 499 in 1996 (54 FR 33230).

The ELDT regulations, implemented on February 7, 2022, and set forth in 49 CFR 380, subparts F and G, establish minimum training standards for individuals applying for certain CDLs and defined curriculum standards for theory and behind-the-wheel (BTW) training. The ELDT curriculum in 49 CFR part 380, Appendix A, Section A3.1, requires Class A CDL applicants to demonstrate proficiency in proper techniques for initiating vehicle movement, executing left and right turns, changing lanes, navigating curves at speed, entry and exit on the interstate or controlled access highway, and stopping the vehicle in a controlled manner. Under 49 CFR 380.603(a)(2), drivers issued a restricted CDL by the State of Alaska are exempt from the ELDT requirements.

Applicant's Request

The State of Alaska (Alaska) requested an exemption from the ELDT curriculum in 49 CFR part 380, appendix A, section A3.1, which requires Class A CDL applicants to demonstrate proficiency in proper techniques for initiating vehicle movement, executing left and right turns, changing lanes, navigating curves at speed, entry and exit on the interstate or controlled access highway, and stopping the vehicle in a controlled manner. Alaska stated that the exemption is necessary because the current threshold for determining whether a driver is eligible for a restricted CDL, set forth in 49 CFR 383.3(e), is outdated and excludes some remote communities that have unpaved, two-lane roads not connected to the National Highway System. Consequently, these areas ''do not have the infrastructure or driving scenarios'' to complete the portions of ELDT that require the driver-trainee to demonstrate proficiency in vehicle control maneuvers on the interstate or controlled access highway. Alaska asserts that, because CDL applicants from these remote communities are not currently eligible to receive a restricted CDL, and thus be exempt from ELDT, they would be required to fly into larger cities and incur travel costs and lost wages to complete the BTW training requirements related to controlled access highways.

In its request for exemption, Alaska asserts ''that the new regulations define off-highway licenses under 49 CFR 383.3(e)(2)(ii) as average daily traffic count of 499 or less, which excludes many remote Alaska communities, so their commercial drivers are now subject to the new ELDT requirements.'' Alaska describes this result as having ''devastating impact on rural Alaska's movement of produce, prescriptions, people, and other goods.''

IV. Method To Ensure an Equivalent or Greater Level of Safety

The Agency believes permitting the issuance of restricted CDLs to drivers operating a commercial motor vehicle (CMV) in 14 geographically remote communities identified in Section VI of this notice will achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)).

V. Public Comments

On July 6, 2022, FMCSA published notice of the State of Alaska application and requested public comment (87 FR 40334). The Agency received 30 comments, 24 of which supported the exemption. Those filing in support included Alaskan driver training schools, Alaskan cities/boroughs, the Alaska Department of Labor and Workforce Development, the Alaska Trucking Association, motor carriers, and several individuals. Five commenters opposed the exemption, including the Owner-Operator Independent Driver's Association (OOIDA), the AFL–CIO/Transportation

Trades Division (AFL–CIO/TTD) and three other individuals. One commenter filed neither for nor against the exemption request.

The Prince of Wales Vocational/Technical School's comments in support of the exemption included points that were echoed by others, stating that the ELDT regulations ''inadvertently will have a devastating effect on most of the State of Alaska by requiring road testing on roads that simply do not exist in most of the State. The shortage of and retention of CDL drivers will be negatively affected by this regulation.''

The Petersburgh Borough added support for the exemption request in their filed comments, stating that ''the costs for regulatory compliant CDL training in combination with the inconvenience of having to spend extended time in another community to receive the training are egregious hardships on employers and the employees seeking to better themselves through attainment of a CDL. By allowing us to continue local rural training and testing, you would show Alaskans that you understand and appreciate that Alaska is a unique landscape.'' Another commenter stated, ''Traveling to a community where training and testing are available is cost prohibitive as it could cost thousands of dollars.''

OOIDA opposed the exemption, citing its participation as an industry stakeholder on the ELDT Negotiated Rulemaking Committee when the ''framework'' of the ELDT rule was agreed upon and commented that these minimum requirements must be strengthened, not waived. The AFL–CIO/TTD also opposed the exemption, stating that allowing Alaska, or any locality within the State, to move forward with an exemption from such basic ELDT requirements would undermine the intent of the ELDT program to prepare commercial drivers to respond safely in situations that they will encounter while driving.

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated the State of Alaska's application for exemption and the public comments and based on its analysis, decided to grant an exemption from 49 CFR 383.3(e)(2) in lieu of granting an exemption from the ELDT curriculum in 49 CFR part 380, Appendix A, Section A3.1, as requested by the State. If FMCSA were to grant the relief requested, the affected drivers would be eligible to obtain an unrestricted CDL and operate in any location in the U.S., even though they did not receive the requisite training to safely operate a CMV when entering and exiting an interstate or controlled access highway designed for high-speed vehicular traffic, navigating curves at speed, changing lanes, and stopping the CMV in a controlled manner. FMCSA concludes that this outcome would not result in a level of safety equivalent to, or greater than the level achieved without the requested exemption.

As noted above, Alaska currently has the discretion, under 49 CFR 383.3(e), to waive certain CDL knowledge and skills tests requirements and issue a restricted CDL, valid only in Alaska. Currently, drivers who apply for a restricted CDL are exempt from the ELDT regulations, pursuant to 49 CFR 380.603(a)(2). However, under § 383.3(e)(2), to be eligible for a restricted CDL issued under § 383.3(e), which is not valid outside the State, drivers must operate exclusively over roads that are not connected to the state highway system and are not connected to any highway or vehicular way with an average daily traffic volume greater than 499. This standard was adopted in 1989 by the Federal Highway Administration, FMCSA's predecessor agency. As the State pointed out in its exemption request, this standard excludes many remote Alaska communities, requiring CDL applicants in these areas to comply with FMCSA's ELDT requirements.

The Agency believes that granting an exemption allowing Alaska to issue restricted CDLs, subject to the terms and conditions set forth below, will achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)). The exemption applies only to CDL applicants who reside in one of the named remote geographical areas identified below and who operate only within those defined areas. In addition, the State may waive only specified elements of the skills test affected by the lack of infrastructure in the identified communities. Individuals applying for a restricted CDL covered by this exemption are exempt from ELDT in accordance with 49 CFR 380.603(a)(2).

VII. Exemption Decision

A. Grant of Exemption

FMCSA grants an exemption from 49 CFR 383.3(e)(2) for a period of two years subject to the terms and conditions of this decision.

B. Applicability

The State of Alaska may issue CDLs under this exemption only to drivers who reside in the following communities or areas: [1]

(1) Bethel—within the local Bethel community road network
(2) Prince of Wales Island
(3) Haines—within the Haines community, and along the Haines Highway corridor, ending at the Canadian Border
(4) Ketchikan—within the Ketchikan community and the airport area on the neighboring Annette Island
(5) King Salmon—within the local King Salmon community road network
(6) Kodiak Island
(7) Kotzebue—within the local Kotzebue community road network
(8) Nome—within the local Nome community road network
(9) Mitkof Island (Petersburg)
(10) Sitka—within the local Sitka community road network
(11) Skagway—within the Skagway community and along the Klondike Highway corridor, ending at the Canadian Border
(12) Unalaska Island
(13) Utqiavik—within the Utqiavik community road network
(14) Wrangell Island

C. Terms and Conditions

The State of Alaska and drivers operating under this exemption are subject to the following terms and conditions:

(1) The State of Alaska must comply with 49 CFR 383.133(b) and 383.135(a) of the knowledge tests standards for testing procedures and methods set forth in 49 CFR part 383, subpart H, and must continue to administer knowledge tests that fulfill the content requirements of subpart G.

(2) The State of Alaska may waive only the following portions of the CDL skills test, as set forth in 49 CFR 383.113(c), that cannot be performed due to infrastructure limitations in the identified communities or areas:

- ability to adjust speed to the configuration and condition of the roadway, weather and visibility conditions, traffic conditions, and motor vehicle, cargo, and driver conditions (§ 383.113(c)(3)); and

[1] The locales were identified by the State of Alaska's Department of Administration, Division of Motor Vehicles (DMV) and independently verified by FMCSA as lacking the infrastructure for CDL applicants to perform the skills required by 49 CFR 383.113(c)(4) and (c)(5). FMCSA notes that the DMV initially identified 15 affected locales, but FMCSA determined that one of the 15 communities operates on major connected thoroughfares and the distances involved are not dissimilar to that experienced by many rural communities in the western United States. The DMV's letter identifying the affected areas is available in the docket of this Notice and can be accessed at *Regulations.gov*.

• ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic (§ 383.113(c)(4));

(3) Drivers applying for a CDL to be issued under this exemption must reside in one of the 14 geographical areas identified in Section VII. B of this Notice;

(4) Drivers issued a restricted CDL under this exemption may operate only within the 14 geographical areas identified in Section VII. B of this Notice; and

(5) The drivers must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR part 350–399).

(6) The State of Alaska must include notice on a restricted CDL issued pursuant to this exemption of the geographical area(s) in which the CDL holder may operate a CMV.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.60, during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption.

E. Notification to FMCSA

The State of Alaska must provide to FMCSA, upon request, a list of all drivers issued CDLs under this exemption.

F. Termination

FMCSA does not believe that drivers covered by this exemption will experience any deterioration of their safety record.

The Agency will, however, rescind the exemption if: (1) the State of Alaska or drivers operating under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption results in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objective of 49 U.S.C. 31136(e) and 31315(b).

Robin Hutcheson,

Administrator.

[FR Doc. 2022–28242 Filed 12–27–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0052]

Hours of Service (HOS) of Drivers; Application for Renewal of American Pyrotechnics Association Exemptions From the 14-Hour Rule and the Electronic Logging Device Rule During Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemptions.

SUMMARY: FMCSA announces its decision to grant exemptions for 32 member companies of the American Pyrotechnics Association (APA) from certain hours of service (HOS) regulations during designated Independence Day periods. The exemptions will allow drivers for these companies to exclude off-duty and sleeper berth time of any length from the calculation of the 14-hour limit and to use paper records of duty status (RODS) in lieu of electronic logging devices (ELDs). FMCSA has analyzed the application for exemptions and the public comments submitted and has determined that the exemptions, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved through compliance with the regulations.

DATES: These exemptions are effective for the period June 28 through July 8, at 11:59 p.m. local time, each year from 2023 through 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4225. Email: *pearlie.robinson@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number (''FMCSA–2021–0052'') in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''View Related Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number ''FMCSA–2021–0052'' in the keyword box, click ''Search,'' and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The HOS regulation in 49 CFR 395.3(a)(2) prohibits the driver of a property-carrying commercial motor vehicle (CMV) from driving after the 14th hour after coming on duty following 10 consecutive hours off duty. Drivers required to prepare RODS must do so using ELDs under 49 CFR 395.8(a)(1)(i). However, under 49 CFR 395.8(a)(1)(iii)(A)*(1),* a motor carrier may allow its drivers to record their duty status manually, rather than use an ELD, if the driver is operating a CMV ''[i]n a manner requiring completion of a record of duty status on not more than 8 days within any 30-day period.''

Applicant's Requests

APA reports that over 16,000 fireworks displays are conducted annually. Although most of the displays are conducted on July 4 each year, it is impossible to deliver and shoot all of the fireworks displays on the Fourth of July holiday. Thus, the fireworks displays are spread out over a period of 11 days.

APA requests renewal of its HOS exemptions from the 14-hour rule in 49 CFR 395.3(a)(2) and the ELD rule in 49 CFR 395.8(a)(1)(i) for 42 of 60 companies included in the 2021 HOS exemptions, which expired on July 8, 2021 [86 FR 34834]. The APA also requests the exemptions on behalf of 3 additional companies not included in the 2021 HOS exemptions. A copy of the request and additional correspondence modifying the request are in the docket at the beginning of this notice.

APA member companies have held waivers or exemptions during Independence Day periods each year since 2005. Copies of the initial request for an exemption, subsequent renewal requests, and all public comments received may be reviewed at *www.regulations.gov* under docket numbers FMCSA–2005–21104, FMCSA–2007–28043, FMCSA–2018–0140, and FMCSA–2021–0052.

On June 16, 2022, FMCSA granted APA a waiver from the 14-hour and ELD regulations, effective June 28, 2022, through July 8, 2022. Prior to issuing the waiver, the Agency conducted a safety analysis of the 45 carriers included in APA's request. The Agency determined that 38 carriers were eligible for the waiver. The waiver allowed these carriers to operate with the requested relief for 11 days during the 2022 Independence Day period and provided the Agency with sufficient time to process APA's exemption request. A copy of the waiver is located at *www.regulations.gov* under docket number FMCSA–2021–0052.

IV. Equivalent Level of Safety

Since 2005, FMCSA has determined that the level of safety associated with the transportation of fireworks would likely be equivalent to, or greater than, the level of safety obtained by complying with the 14-hour rule. In 2019, FMCSA reached the same conclusion when it granted APA relief from the ELD requirement. APA believes an equivalent level of safety will be achieved because the fireworks are transported over relatively short routes from distribution points to the site of the fireworks display, and normally in the morning when traffic is light. APA also believes that fatigued driving is reduced or eliminated because drivers spend considerable time installing, wiring, and safety-checking the fireworks displays at the site, followed by several hours off duty in the late afternoon and early evening prior to the event. During this off-duty time, the drivers are allowed to rest or take a nap. Additionally, these drivers would continue to use paper RODS in lieu of an ELD during the designated Independence Day periods. APA asserts that the scheduled off duty time and use of RODS will ensure that fatigued driving is managed.

V. Public Comments

On July 8, 2022, FMCSA published notice of APA's application and requested public comments (87 FR 40874). The Agency received one comment. AWM Associates, LLC, stated that FMCSA should deny the exemption because the requested timeframe of 11 days is unreasonable. AWM Associates noted that drivers are not required to use an ELD if they use paper logs no more than 8 days during any 30-day period and questioned why APA member companies would need an exemption from the 14-hour rule after July 5.

VI. FMCSA Response

Based on the information APA provided, FMCSA determines that the requested period of 11 days is reasonable. APA explained in its application that fireworks displays are spread out over a period of 11 days because it would be impossible to deliver and shoot all 16,000 professional fireworks displays on July 4. To cover the 11-day period without the exemptions, APA states that its members would have to hire additional drivers with commercial driver's licenses (CDLs) and hazardous material endorsements for a very brief period. APA explains that it would be difficult or impossible to find enough qualified drivers for this part-time, holiday-specific work, and the increased cost could be passed along to the cities, towns and municipalities that contract these shows.

VII. FMCSA Safety Analysis and Decision

FMCSA has evaluated APA's application and the safety records of the 45 companies to which the exemptions would apply and grants the exemptions to 32 APA member companies. FMCSA believes that these 32 APA member companies will likely achieve a level of safety equivalent to or greater than the level of safety achieved without the exemption.

Prior to publishing the **Federal Register** notice announcing receipt of APA's application to renew its HOS exemptions, FMCSA ensured that each motor carrier possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any ''imminent hazard'' or other out-of-service (OOS) orders. The Agency conducted a comprehensive review of the safety performance history on each of the motor carriers listed in the appendix table during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and crash reports submitted to FMCSA by State agencies. The motor carriers have ''satisfactory'' safety ratings issued by FMCSA and valid Hazardous Materials Safety Permits. In addition, the Pipeline and Hazardous Materials Safety Administration reviewed its investigative records. The member carriers may be subject to investigations prior to future renewal of the exemptions.

FMCSA denies the exemptions for 13 APA member companies. FMCSA found that 12 member companies have vehicle and/or HM OOS rates higher than the national average as of August 9, 2022. The 13th member company was excluded because the company does not have a Hazardous Materials Safety Permit. Under these circumstances, FMCSA believes it would be inappropriate at this time to grant exemptions to these companies.

A. Grant of Exemptions

FMCSA grants the exemptions for a period June 28 through July 8 for two years subject to the terms and conditions of this decision and the absence of public comments that would cause the Agency to terminate the exemption under Section F below. The exemptions from 49 CFR 395.3(a)(2) and 49 CFR 395.8(a)(1)(i) are effective for the period June 28 through July 8 each year from 2023 through 2024.

B. Applicability of Exemptions

The exemptions are limited to drivers employed by the 29 motor carriers previously covered by the exemptions, and drivers employed by the 3 additional carriers identified by an asterisk in the appendix table of this notice. Drivers covered by these exemptions will be able to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. Drivers will be able to use

paper RODs in lieu of ELDs to record their HOS.

C. Terms and Conditions

When operating under these exemptions, motor carriers and drivers are subject to the following terms and conditions:

1. Drivers must not drive more than 11 hours after accumulating 14 hours on duty prior to beginning a new driving period.

2. Drivers must have 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period.

3. Drivers must use paper RODS and supporting documents, maintain RODS and supporting documents for 6 months from the date the record is prepared, and make RODS and supporting documents accessible to law enforcement upon request.

4. Drivers and carriers subject to the ELD requirements before June 28 must continue to use ELDs and comply with all ELD requirements, including maintaining ELD data for 6 months from the date the electronic record is generated and making ELD data accessible to law enforcement upon request.

5. Drivers must maintain a valid CDL with a hazardous materials endorsement and not be subject to an out-of-service order or loss of driving privileges.

6. Motor carriers must maintain a Hazardous Materials Safety Permit and Satisfactory safety rating assigned by FMCSA under the procedures in 49 CFR part 385.

7. Motor carriers must ensure their CMVs are properly marked as required by 49 CFR 390.21(a)–(d). Motor carriers operating rented CMVs may not rely on the marking provisions of 49 CFR 390.21(e).

8. Motor carriers must ensure they comply with the requirements for shipping papers, package marking, labeling, and placarding in 49 CFR part 172.

9. Drivers and motor carriers covered by the exemptions must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) (FMCSRs) and Hazardous Materials Regulations (49 CFR parts 105–180) (HMRs).

10. Prior to the beginning of each period of operations during the exemption, FMCSA will ensure that each motor carrier possesses an active USDOT registration, minimum required levels of insurance, and was not subject to any ''imminent hazard'' or other out-of-service (OOS) orders. FMCSA will also conduct a comprehensive review of the safety performance history on each of the motor carriers listed in the appendix table during the review process. As part of this process, FMCSA will review its Motor Carrier Management Information System safety records, including inspection and crash reports submitted to FMCSA by State agencies.

11. Motor carriers may be investigated to evaluate compliance with the terms and conditions of this exemption, in addition to the FMCSRs and HMRs.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period these exemptions would be in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with the exemptions with respect to a firm or person operating under the exemptions. States may, but are not required to, adopt the same exemptions with respect to operations in intrastate commerce.

E. Notification to FMCSA

Motor carriers using exempt drivers must notify FMCSA within five business days of any crashes (as defined by 49 CFR 390.5) involving the operation of any its CMVs while operating under these exemptions. The notification must include the following information:

a. Identifier of the Exemptions: ''APA'';

b. Date of the crash;

c. City or town, and State, in which the accident occurred, or which is closest to the scene of the crash;

d. Driver's name and driver's license State, number, and class;

e. Co-Driver's name and driver's license State, number, and class;

f. Vehicle company number and power unit license plate State and number;

g. Number of individuals suffering physical injury;

h. Number of fatalities;

i. The police-reported cause of the crash;

j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and

k. The total driving time and the total on-duty time of the CMV driver at the time of the crash.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV.*

F. Termination

FMCSA does not believe the motor carriers or drivers covered by these exemptions will experience any deterioration of their safety record. The exemptions will be rescinded if: (1) motor carriers and drivers operating under the exemptions fail to comply with the terms and conditions of the exemptions; (2) the exemptions have resulted in a lower level of safety than was maintained before the exemptions were granted; (3) the annual investigation yields unsatisfactory results; or (4) continuation of the exemptions would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Robin Hutcheson,

Administrator.

Appendix to Notice of Applications for Renewal of APA Exemptions From the 14-Hour and ELD HOS Rules for Independence Day Periods

JUNE 28, 2022 THROUGH JULY 8, 2024 FOR 32 MOTOR CARRIERS

	Motor carrier	Street address	City, state, zip code	DOT No.
1	American Fireworks Display, LLC	105 County Route 7	McDonough, NY 13801	2115608
2	AM Pyrotechnics, LLC	2429 East 535th Rd	Buffalo, MO 65622	1034961
3	Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct	Maineville, OH 45039	2008107
4	Artisan Pyrotechnics, Inc	82 Grace Road	Wiggins, MS 39577	1898096
5	Celebration Fireworks, Inc.	7911 7th Street	Slatington, PA 18080	1527687
6	*CP Transport, LLC	6377 Hwy. 62 NE	Lanesville, IN 47136	3076205
7	Dominion Fireworks, Inc	669 Flank Road	Petersburg, VA 23805	540485
8	Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
9	Fireworks & Stage FX America	12650 Hwy 67S. Suite B	Lakeside, CA 92040	908304
10	Fireworks by Grucci, Inc	20 Pinehurst Drive	Bellport, NY 11713	324490

JUNE 28, 2022 THROUGH JULY 8, 2024 FOR 32 MOTOR CARRIERS—Continued

	Motor carrier	Street address	City, state, zip code	DOT No.
11	Aluminum King Mfg., Ltd. dba Flashing Thunder Fireworks Thunder Fireworks.	700 E Van Buren Street	Mitchell, IA 50461	420413
12	Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
13	Hollywood Pyrotechnics, Inc	1567 Antler Point	Eagan, MN 55122	1061068
14	Johnny Rockets Fireworks Display Company.	3240 Love Rock	Steger, IL 60475	1263181
15	Las Vegas Display Fireworks, Inc	4325 West Reno Ave	Las Vegas, NV 89118	3060878
16	Legion Fireworks Co., Inc	10 Legion Lane	Wappingers Falls, NY 12590	554391
17	*Pyro Productions Inc	2083 Helms Road	Rehobeth, AL 36301	3723192
18	*Pyro Shows East Coast	4652 Catawba River Road	Catawba, SC 29704	3709087
19	Pyro Shows of Alabama, Inc	3325 Poplar Lane	Adamsville, AL 35005	2859710
20	Pyro Shows of Texas, Inc	6601 9 Mile Azle Rd	Fort Worth, TX 76135	2432196
21	Pyro Spectaculars, Inc	3196 N Locust Ave	Rialto, CA 92376	029329
22	Pyro Spectaculars North, Inc	5301 Lang Avenue	McClellan, CA 95652	1671438
23	Pyrotecnico Fireworks Inc	299 Wilson Rd	New Castle, PA 16105	526749
24	RES Specialty Pyrotechnics dba RES Pyro.	21595 286th St	Belle Plaine, MN 56011	523981
25	Rozzi's Famous Fireworks, Inc	118 Karl Brown Way	Loveland, OH 45140	0483686
26	Santore's World Famous Fireworks, LLC.	846 Stillwater Bridge Road	Schaghticoke, NY 12154	2574135
27	Southern Sky Fireworks, LLC	6181 Denham Rd	Sycamore, GA 31790–2603	3168056
28	Spielbauer Fireworks Co, Inc	1976 Lane Road	Green Bay, WI 54311	046479
29	Vermont Fireworks Co., dba Northstar Fireworks Co., Inc	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
30	Western Display Fireworks, Ltd	10946 S. New Era Rd	Canby, OR 97013	498941
31	Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
32	Young Explosives Corp	2165 New Michigan Rd	Canandaigua, NY 14618	450304

[FR Doc. 2022–28234 Filed 12–27–22; 8:45 am]
BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Superfund Chemical Substance Tax; Request To Modify List of Taxable Substances; Filing of Petition for Polyoxymethylene

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of filing and request for comments.

SUMMARY: This notice of filing announces that a petition has been filed pursuant to Revenue Procedure 2022–26, 2022–29 I.R.B. 90, requesting that polyoxymethylene be added to the list of taxable substances under section 4672(a) of the Internal Revenue Code. This notice of filing also requests comments on the petition. This notice of filing is not a determination that the list of taxable substances is modified.

DATES: Written comments and requests for a public hearing must be received on or before February 27, 2023.

ADDRESSES: Commenters are encouraged to submit public comments or requests for a public hearing relating to this petition electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate public docket number IRS–2022–0033 or polyoxymethylene) by following the online instructions for submitting comments. Comments cannot be edited or withdrawn once submitted to the Federal eRulemaking Portal. Alternatively, comments and requests for a public hearing may be mailed to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice of Filing for Polyoxymethylene), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. All comments received are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available. If a public hearing is scheduled, notice of the time and place for the hearing will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Please contact Amanda F. Dunlap, (202) 317–6855 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

(a) *Overview.* The petition requesting the addition of polyoxymethylene to the list of taxable substances under section 4672(a) of the Internal Revenue Code contains the information detailed in paragraph (b) of this document. The information is provided for public notice and comment pursuant to section 9 of Rev. Proc. 2022–26. The publication of petition content in this notice of filing does not constitute Department of the Treasury or Internal Revenue Service confirmation of the accuracy of the information published.

(b) *Petition Content.*

(1) *Substance name:*

Polyoxymethylene

According to the petition, these are the chemical names typically used for the substance polyoxymethylene:

POM
Polyoxymethylene
Poly(oxymethylene) glycol
Polymethylene glycol
Polyacetal
Acetal
Polyformaldehyde

(2) *Petitioner:* Celanese Ltd., an exporter of polyoxymethylene

(3) *Proposed Classification Numbers:*

HTSUS number: 3907.10.0000
Schedule B number: 3907.10.0000
CAS number: 9002–81–7

(4) *Petition Filing Date:*

December 20, 2022
Petition filing date for purposes of section 11.02 of Rev. Proc. 2022–26: July 1, 2022

(5) *Brief Description of the Petition:* According to the petition, polyoxymethylene is an engineering thermoplastic used in precision parts requiring high stiffness, low friction, and excellent dimensional stability. It is

widely used in the automotive and consumer electronics industry as well as many other high-performance uses. Polyoxymethylene is made from methane and is manufactured through the polymerization of formaldehyde. Taxable chemicals constitute 50.0 percent by weight of the materials used to produce this substance.

(6) *Process Identified in Petition as Predominant Method of Production of Substance:* The reaction of aqueous formaldehyde with an alcohol to create a hemiformal; dehydration of the hemiformal/water mixture (either by extraction or vacuum distillation); and release of the formaldehyde by heating the hemiformal. The formaldehyde is then polymerized by anionic catalysis, and the resulting polymer stabilized by reaction with acetic anhydride.

(7) *Stoichiometric Material Consumption Equation, Based on Process Identified as Predominant Method of Production:*

$$n\ CH_4 + n\ ½\ O_2 \rightarrow (CH_2O)_n + n\ H_2$$

(8) *Rate of Tax Calculated by Petitioner Based on Petitioner's Conversion Factors for Taxable Chemicals Used in Production of Substance:*

Rate of Tax: $ 3.65 per ton
Conversion Factor: 0.53 for methane

(9) *Public Docket Number:* IRS–2022–0033

Stephanie Bland,

Branch Chief (Passthroughs and Special Industries), IRS Office of Chief Counsel.

[FR Doc. 2022–28276 Filed 12–27–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Reimbursement for Caskets and Urns for Burial of Unclaimed Remains in a National Cemetery or a VA-Funded State or Tribal Veterans' Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is updating the monetary reimbursement rates for caskets and urns purchased for interment in a VA national cemetery or a VA-funded State or Tribal Veterans' cemetery of Veterans who die with no known next of kin and where there are insufficient resources for furnishing a burial container. The purpose of this notice is to notify interested parties of the rates that will apply to reimbursement claims that occur during calendar year 2023.

DATES: This reimbursement is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Jerry Sowders, National Cemetery Administration, Department of Veterans Affairs, 4850 Lemay Ferry Road, Saint Louis, MO 63129. The telephone number is 314–416–6369. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 2306(f) of title 38, United States Code, authorizes VA's National Cemetery Administration to furnish a casket or urn for interment in a VA national cemetery or a VA-funded State or Tribal Veterans' cemetery of the unclaimed remains of Veterans for whom VA cannot identify a next of kin, and determines that sufficient financial resources for the furnishing of a casket or urn for burial are not available. VA established regulations to administer this authority as a reimbursement benefit in 38 CFR 38.628.

In accordance with the regulation, reimbursement for a claim received in any calendar year will not exceed the average cost of a 20-gauge metal casket or a durable plastic urn during the fiscal year preceding the calendar year of the claim, as determined by VA.

Average costs are based on market price analysis for 20-gauge metal caskets, designed to contain human remains, with a gasketed seal, and external rails or handles. The same analysis is completed for durable plastic urns, designed to contain human remains, which include a secure closure to contain the cremated remains.

Using this approach, in fiscal year 2022, the average costs were determined to be $1,115.00 for caskets and $106.00 for urns. Accordingly, the maximum reimbursement rates payable for qualifying interments occurring during calendar year 2023 are $1,115.00 for caskets and $106.00 for urns.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on December 19, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2022–28229 Filed 12–27–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a Department of Veterans Affairs National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is updating the monetary allowance payable for qualifying interments that occur during calendar year (CY) 2023, which applies toward the private purchase of an outer burial receptacle (or ''graveliner'') for use in a VA national cemetery. The allowance is equal to the average cost of Government-furnished graveliners less any administrative costs to VA. The purpose of this notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing and paying the allowance and the amount of the allowance payable for qualifying interments that occur in CY 2023.

DATES: This allowance is effective on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: William Carter, Chief of Budget Execution Division, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Telephone: 202–461–9764 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: 38 U.S.C. 2306(e)(3), (4) authorizes VA to provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments that occur during CY 2023 is the average cost of Government-furnished graveliners in fiscal year (FY) 2022, less the administrative cost incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners that were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average

cost was determined to be $409.00 for FY 2022.

The administrative cost is based on the costs incurred by VA during CY 2022 that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. This cost has been determined to be $9.00.

The allowance payable for qualifying interments occurring during CY 2023, therefore, is $400.00.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on December 19, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2022–28204 Filed 12–27–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Wednesday,
No. 248 December 28, 2022

Part II

Department of the Interior

Fish and Wildlife Service
50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for ʻIʻiwi; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2022–0144; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BG61

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for ʻIʻiwi

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the federally threatened ʻiʻiwi (*Drepanis coccinea*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 275,647 acres (111,554 hectares) on the islands of Kauaʻi, Maui, and Hawaiʻi, in the State of Hawaii, fall within the boundaries of the proposed critical habitat designation. We also announce a public informational meeting and public hearing and the availability of a draft economic analysis of the proposed critical habitat designation.

DATES: *Comment submission:* We will accept comments received or postmarked on or before February 27, 2023. 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.

Public informational meeting and public hearing: On February 10, 2023, we will hold a public informational meeting from 6 to 6:45 p.m., Hawaii Time, followed by a public hearing from 6:45 to 8 p.m., Hawaii Time. See *Public Hearing,* in **SUPPLEMENTARY INFORMATION**, for more information.

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–R1–ES–2022–0144, 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–R1–ES–2022–0144, 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: The species status report and other materials relating to this critical habitat designation, including coordinates or plot points or both from which the maps are generated, are included in the decision file and are available at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2022–0144.

Public informational meeting and public hearing: We are holding the public informational meeting and public hearing via the Zoom online video platform and via teleconference. See *Public Hearing* and *Reasonable Accommodation,* below, for more information.

FOR FURTHER INFORMATION CONTACT: Earl Campbell, Project Leader, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard Room 3–122, Honolulu, HI 96850; telephone 808–792–9400. 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. 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:

Executive Summary

Why we need to publish a rule. Under the Act, 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. Designations of critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This rule proposes to designate approximately 275,647 acres (111,554 hectares) as critical habitat for the federally threatened ʻiʻiwi on three islands (Kauaʻi, Maui, Hawaiʻi) in the State of Hawaii.

The basis for our action. Under section 4(a)(3) of the Act, if we determine that a species is an endangered or threatened species we must, to the maximum extent prudent and determinable, designate critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; 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 data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native Hawaiian organizations, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments for the islands of Kauaʻi, Maui, and Hawaiʻi, in the State of Hawaii concerning:

(1) 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 regarding the following factors that the current 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;

(d) No areas meet the definition of critical habitat; or

(e) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

In addition, we seek comment regarding whether and how this information would differ under the factors that the pre-2019 regulations identify as reasons why designation of critical habitat may be not prudent.

(2) Specific information on:

(a) The amount and distribution of ʻiʻiwi habitat;

(b) Any additional areas occurring within the range of the species in the State of Hawaii, including on the islands of Molokaʻi and Oʻahu, that should be included in the designation because they (i) 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 protection, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species; and

(c) Special management considerations or protection that may be needed in the critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) To evaluate the potential to include areas not occupied at the time of listing, we particularly seek comments regarding whether occupied areas are adequate for the conservation of the species. Additionally, please provide specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species. We also seek comments or information regarding whether areas not occupied at the time of listing qualify as habitat for the species.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) 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.

(5) 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 and any additional information regarding probable economic impacts that we should consider.

(6) 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, in particular for those based on a conservation program or plan. These may include Federal, Tribal, State, county, local, or private lands with permitted conservation plans covering the species in the area such as habitat conservation plans, safe harbor agreements, or conservation easements, or non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. Detailed information regarding these plans, agreements, easements, and partnerships is also requested, including:

(a) The location and size of lands covered by the plan, agreement, easement, or partnership;

(b) The duration of the plan, agreement, easement, or partnership;

(c) Who holds or manages the land;

(d) What management activities are conducted;

(e) What land uses are allowable; and

(f) If management activities are beneficial to the ʻiʻiwi and its habitat.

If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

(7) 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, do not provide substantial information necessary to support a determination. Section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific information available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. Based on the new information we receive (and any comments on that new information), our final critical habitat designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species.

Public Hearing

We will hold a public informational meeting and public hearing on the date and at the times listed in **DATES**. We are holding the public informational meeting and public hearing via the Zoom online video platform and via teleconference so that participants can attend remotely. To listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing via Zoom or by telephone, you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit *https://empsi.zoom.us/webinar/register/WN_kg1fCOfUTxOXaznf1ezIig.* Registrants will receive the Zoom link and the telephone number for the public informational meeting and public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (*https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials*) prior to the public informational meeting and public hearing.

The public hearing will provide interested parties an opportunity to present verbal testimony (formal, oral

comments) on this proposed rule. While the public informational meeting will be an opportunity for dialogue with the Service, no such opportunity will be available at the public hearing. The purpose of the public hearing is to provide a forum for accepting formal verbal testimony, which will then become part of the record for the proposed rule. In the event there is a large attendance, the time allotted for verbal testimony may be limited. Therefore, anyone wishing to provide verbal testimony at the public hearing is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal or by U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Again, anyone wishing to provide verbal testimony at the public hearing must register before the hearing (*https://empsi.zoom.us/webinar/register/WN_kg1fCOfUTxOXaznf1ezIig*). The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

Reasonable Accommodation

The Service is committed to providing access to the public informational meeting and public hearing for all participants. Closed captioning will be available during the public informational meeting and public hearing. Further, a full audio and video recording and transcript of the public hearing will be posted online at *https://www.fws.gov/pacificislands* after the hearing. Participants will also have access to live audio during the public informational meeting and public hearing via their telephone or computer speakers. Persons with disabilities requiring reasonable accommodations to participate in the meeting and/or hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the date of the meeting and hearing to help ensure availability. An accessible version of the Service's public informational meeting presentation will also be posted online at *https://www.fws.gov/pacificislands* prior to the meeting and hearing (see **DATES**, above). See *https://www.fws.gov/pacificislands* for more information about reasonable accommodation.

Previous Federal Actions

Please refer to the final listing rule for the i'iiwi, which published in the **Federal Register** on September 20, 2017 (82 FR 43873), for a detailed description of previous Federal actions concerning this species.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our proposed critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat. We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Background

The 'i'iwi is a bird endemic to the Hawaiian Islands whose name is often anglicized to ''iiwi.'' We prefer to, and will, include Hawaiian language spellings, including diacritical marks, to the degree possible and appropriate in the preambles of our **Federal Register** documents. For the text to be codified in the Code of Federal Regulations (CFR), however, we will omit diacritical marks to ensure that no errors are inadvertently incorporated during the codification process.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation 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 likely result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the

extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

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.

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 species status report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; and (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. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, 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 in the final listing rule (82 FR 43873; September 20, 2017), there is currently no imminent threat of collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our species status report and final listing determination for the ʻiʻiwi, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to ʻiʻiwi and that those threats in some way can be addressed by the Act's section 7(a)(2) consultation measures. The species occurs 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 ʻiʻiwi.

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 ʻiʻiwi 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 this species is 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 ʻiʻiwi.

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 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.

Habitats Representative of the Historical, Geographical, and Ecological Distributions of the Species

The ‘i‘iwi is an endemic Hawaiian forest bird belonging to the honeycreeper subfamily, Drepanidinae, of the Fringillidae (finch family). Historical abundance estimates are not available, but the ‘i‘iwi was considered one of the most common of the native forest birds in Hawaii by early naturalists and was found from sea level to the tree line across all the major islands (Banko 1981, pp. 1–2). In the late 1800s, ‘i‘iwi began to disappear from low-elevation forests due to habitat loss and avian diseases (Banko 1981, pp. 2–3), and by the mid-1900s, the species was largely absent from sea level to mid-elevation forests (Munro 1944, p. 94). Today ‘i‘iwi are no longer found on Lanai and only a few individuals may be found on O’ahu, Moloka’i, and west Maui. Remaining populations of ‘i‘iwi are restricted to high-elevation forests above 3,937 feet (ft) (1,200 meters (m)) on Hawai‘i Island, east Maui, and Kaua‘i because these areas contain temperatures low enough to reduce or inhibit the spread of avian malaria and avian pox, carried by *Culex* mosquitoes. At the time of listing, the rangewide population estimate was approximately 600,000 individuals. An estimated 90 percent of ‘i‘iwi occur on Hawai‘i Island, with the remainder distributed on east Maui (about 10 percent), and Kaua‘i (less than 1 percent).

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

‘I‘iwi are found primarily in closed canopy, montane wet or mesic forests of tall stature, dominated by native ‘ōhi‘a (*Metrosideros polymorpha*) or ‘ōhi‘a and koa (*Acacia koa*) trees. ‘I‘iwi are nectarivorous; their diet consists predominantly of nectar from the flowers of ‘ōhi‘a, but they may also feed on māmane (*Sophora chrysophylla*), and plants in the lobelia family (Campanulaceae) (Fancy and Ralph 1998, p. 4). They also feed opportunistically upon insects and spiders (Fancy and Ralph 1998, pp. 4–5). The ‘i‘iwi’s long, curved bill is a result of coevolution with native Hawaiian plants in the lobelia family, which have long, curved corollas (groups of petals that encircle the reproductive structures of a flower) (Fancy and Ralph 1998, p. 4, and references therein). Hawaiian lobelioids in the subfamily Lobelioideae, provide an important food source for ‘i‘iwi and represent the largest plant radiation on any island archipelago with 126 species in six genera (Givnish et al. 2008, p. 410). However, many of Hawai‘i’s lobelioids are impacted by feral ungulates and contain few defenses against herbivory. ‘I‘iwi now feed primarily on ‘ōhi‘a flowers, which have stamens that extend 1–3 cm (0.4–1.2 in) out from the flower and give the blossoms a pompom, brush, or hairlike appearance (Fancy and Ralph 1998, p. 4). ‘I‘iwi are strong fliers that move long distances to locate nectar sources, and are well known for their seasonal movements in response to the availability of flowering ‘ōhi‘a (Fancy and Ralph 1998, p. 3.) The ‘i‘iwi’s seasonal movement to lower elevation areas in search of nectar sources is an important factor in the exposure of the species to avian diseases, particularly malaria.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

On the islands of Hawai‘i, Kaua‘i, and Maui, the three islands that currently support populations of ‘i‘iwi, the species breeds and winters in mesic and wet forests that are dominated by ‘ōhi‘a and koa trees (Fancy and Ralph 1998, p. 3). ‘I‘iwi do not demonstrate high fidelity to a local breeding area (Fancy and Ralph 1998, p. 9); rather, individual birds switch breeding sites from year to year to take advantage of localized nectar availability (Fancy and Ralph 1998, p. 9). ‘I‘iwi pairs remain together during the breeding season and defend a small area around their nest, but disperse after breeding and raising young (Fancy and Ralph 1998, p. 2). The ‘i‘iwi breeding season starts as early as October and continues through to the following August (Fancy and Ralph 1998, p. 7). However, the majority of breeding occurs from February through June, coinciding with peak flowering of ‘ōhi‘a (Fancy and Ralph 1998, p. 2). ‘I‘iwi construct cup-shaped nests comprised of twigs and lined with lichens and moss in the upper canopy of ‘ōhi‘a trees at an average nest height of 23.6 ft (7.2 m) (Fancy and Ralph 1998, p. 8).

Space for Individual and Population Growth and for Normal Behavior

‘Ōhi‘a and other flowering trees and shrubs are distributed across the landscape and flower asynchronously (Ralph and Fancy 1995, pp. 735–741). ‘I‘iwi require large areas of suitable habitat for foraging. They are strong fliers that move long distances to locate nectar sources (Fancy and Ralph 1998, p. 3;). ‘I‘iwi move several miles (several kilometers) in search of large forest patches of seasonally asynchronous flowering trees or shrubs (Guillaumet et al. 2017, p. 1). ‘I‘iwi forage in flocks of two to nine ‘i‘iwi and with other Hawaiian honeycreeper species such as ‘Apapane (*Himatione sanguinea*), particularly after the breeding season (Fancy and Ralph 1998, p. 7). ‘I‘iwi move according to available nector sources, and other than defending a small area around their nest when

breeding, ʻIʻiwi are not territorial, nor do they have a defined home range.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of ʻiʻiwi from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the species status report (Service 2016, entire; available on *https://www.regulations.gov* at Docket No. FWS–R1–ES–2022–0144). We have determined that the following physical or biological features are essential to the conservation of ʻiʻiwi:

(1) Multiple patches of seasonally flowering trees including ʻōhiʻa and māmane and/or shrubs that collectively provide a year-round nectar source. The number of patches of flowering trees and shrubs needed may be few if patch size is large. For example, a few large contiguous areas of forest containing seasonally asynchronously flowering trees and shrubs that are several square miles (several kilometers) in size, or many small patches with concentrated, seasonally asynchronously flowering trees and shrubs would meet the ʻiʻiwi's year-round nectar source needs. Patches can be close together, such as individual flowering trees a few hundred feet (hundred meters) apart in an open landscape, or far apart, such as large forest patches of seasonally asynchronous flowering trees or shrubs as much as several miles (several kilometers) apart.

(2) Tall stature trees (height taller than 26 ft (8 m)) characteristic of a mesic and wet forest ecosystem, including ʻōhiʻa and koa for nesting. We define tall stature forest as forest with a minimum canopy height of 26 ft (8 m) based on mean nest height for ʻiʻiwi of 24 feet.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. As discused above, ʻiʻiwi habitat is characterized by mesic and wet forests that are dominated by ʻōhiʻa and koa trees. This ecosystem is a multi-layered structure of tall canopy trees, secondary shrubs (*e.g.,* Lobelioids) and fern layers, and ground-hugging mosses and lichens. The functionality of this system is dependent on native plant regeneration, pollination, and seed dispersal. A keystone species in this system is the ʻōhiʻa tree. ʻŌhiʻa are specificially adapted for bird pollination because they produce copius nectar; newly secreted nectar has low sugar concentration, and flowers are predominantly red in color (Carpenter 1976, p. 1139.) Red flowers, the most common type of ʻōhiʻa blossoms are partially self-incompatible and require an animal pollinator for high-levels of fruit set and good seed set (Carpenter 1976, p. 1134.) The Hawaiian honeycreepers, including ʻiʻiwi, serve an important role as pollinators in Hawaiʻi's mesic and wet forest ecosystem and are necessary to ensure the health of this ecosystem. Unfortunately, Hawaiian honeycreepers, especially ʻiʻiwi, are highly susceptible to avian disease. For example, a single bite from the southern house mosquito (*Culex quinquefasciatus*) carrying avian malaria can be fatal to individuals of the Hawaiian honeycreeper genera (Atkinson et al. 1995, p. S65; Atkinson et al. 2000, p. 199). Climate change exacerbates the threat of mosquito-borne avian disease by increasing forest temperatures allowing cold-intolerant mosquitos to climb higher in elevation, constricting the range of Hawaiian honeycreepers. Degradation and fragmentation of forests caused by nonnative plants, ungulates, fire, and plant pathogens are also threats to ʻiʻiwi habitat. For a detailed discussion of threats to ʻiʻiwi and its habitat, see the final listing rule published in the **Federal Register** on September 20, 2017 (82 FR 43873).

Any stressors that result in further degradation or fragmentation of the forests on which the ʻiʻiwi relies for foraging and nesting are likely to exacerbate the impacts of avian disease on the species and directly affect habitat features which ʻiʻiwi rely on for their life history processes. These stressors include invasive plants, which outcompete and displace native ʻōhiʻa. Several species of nonnative grasses are widely documented to fuel a grass/fire cycle of intrusion into Hawaiʻi's native ʻōhiʻa forests, further degrading biodiversity. In addition, feral ungulates including pigs (*Sus scrofa*), cattle (*Bos taurus*), sheep (*Ovis aries*), and axis deer (*Axis axis*) degrade ʻōhiʻa forest habitat by spreading nonnative plant seeds, grazing and trampling native vegetation, contributing to erosion, and creating mosquito breeding habitat (Mountainspring 1986, p. 95; Camp et al. 2010, p. 198). In addition to the effects of nonnative plants and animals on ʻōhiʻa and its habitat, ʻōhiʻa forest is impacted by several diseases and natural processes including ʻōhiʻa dieback, ʻōhiʻa rust, and rapid ʻōhiʻa death caused by the *Ceratocystis* fungus.

Features essential to the conservation of ʻiʻiwi may require special management considerations to reduce the following threats: (1) extirpation of native avian pollinators by mosquito-borne diseases which negatively impact mesic and wet forest health and persistence; (2) degradation of forest habitat by nonnative ungulates; (3) establishment and spread of habitat-altering nonnative plants; and (4) spread of nonnative pathogens including those that cause rapid ʻōhiʻa death, a fungal wilt disease.

Management actions that could minimize or ameliorate these threats include, but are not limited to, removal of mosquito breeding sources (such as application of larvicides to standing water), control or eradication of significant habitat-modifying invasive plants, ungulate removal and exclusion fencing, reduction of the spread of rapid ʻōhiʻa death and other plant pathogens, and habitat restoration to encourage multiple types of native flowering plants at higher elevations. These management actions would result in the enhancement of ʻiʻiwi breeding and foraging areas. In addition, the incompatible insect technique may be used in some areas to limit southern house mosquito populations. This technique involves the release of male southern house mosquitoes infected with *Wolbachia* bacteria, which renders them incapable of producing viable offspring when they mate with wild-type females, thereby reducing mosquito populations that carry avian diseases (Pagendam et al. 2020, entire).

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 are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat. The area of occupied ʻiʻiwi habitat fulfills the species' recovery criteria for size and distribution of forest and shrubland

habitat needed for recovery (Service 2021, pp. 110–112). Therefore, the areas occupied by the ʻiʻiwi are adequate to ensure the conservation of the species. For areas within the geographic area occupied by the species at the time of listing, we used the methodology described below to delineate critical habitat unit boundaries.

To determine the area occupied at the time of listing, we relied primarily on a summary of abundance, distribution, and trends compiled by the U.S. Geological Survey (Paxton et al. 2013, entire). This dataset represents the most recent and best available dataset for ʻiʻiwi populations. Where this summary was incomplete, specifically within the Kula region of Maui, we used information provided by the National Park Service and the Maui Forest Bird Recovery Project (Judge et al. 2019, p. 34). Rangewide, ʻiʻiwi are constrained to a narrow band of montane forest at an elevation of 4,265–6,233 ft (1,300–1,900 m). Most ʻiʻiwi are found on the island of Hawaiʻi (90 percent), followed by east Maui (about 10 percent), and Kauaʻi (less than 1 percent). Relict populations may exist on Oʻahu, west Maui, and Molokaʻi (Paxton et al. 2013, p. 10).

Within occupied areas, we identified the areas that support the highest densities of ʻiʻiwi. Areas of ʻiʻiwi abundance are proxies for patches of flowering ʻōhiʻa and other nectar sources within mesic and wet forest ecosystems. ʻIʻiwi are known to undertake seasonal movements that mirror ʻōhiʻa flowering periods. Due to the variability of mesic and wet forest ecosystems and the limitations of satellite imagery to distinguish physical and biological features, ʻiʻiwi abundance was used as a proxy for seasonal flowering ʻōhiʻa and other nectar sources. Therefore, forest bird surveys conducted during the late 1970s and early 1980s (Scott et al. 1986, entire) were our primary source of information for delineating high-density areas. More recent surveys (Paxton et al. 2013, entire) show some contraction of the species' range, particularly at lower elevations. However, the high-density bands described in Paxton et al. 2013 correspond closely with 1970s-80s density maps. Because of this close correspondence and because the older mapped densities provide more detailed information for locations of high-density populations, both across and along the elevation contour, we relied primarily on the older dataset to delineate the highest density areas. We also considered the most recent surveys for the Kula region on Maui conducted by the National Park Service and Maui Forest Bird Recovery Project (Judge et al. 2019, p. 34).

ʻIʻiwi foraging behavior required that we delineate critical habitat areas that are large enough to ensure regionally resilient populations. To ensure redundancy and representation of the species at a rangewide scale, we determined that the islands of Kauaʻi, Maui, and Hawaiʻi should be included in the critical habitat designation. These three islands represent the functional distribution of the species and are separated by enough distance that if one island suffered a catastrophic population decline due to a hurricane or other environmental catastrophe, populations on other islands would likely be spared. Populations across this distribution also represent the genetic, ecological, and behavioral diversity of the species. For Maui and Hawaiʻi, the two islands that support multiple populations, we also considered redundancy and representation at an island scale. Maintaining habitat to support multiple regional populations on each island safeguards against the effects of smaller-scale catastrophic events and ensures inclusion of diverse habitats that represent the behavioral and ecological diversity of the species. Based on the Scott et al. (1986) dataset, we included all areas with a maximum mapped density of 100 birds per square kilometer (birds/km^2), a density that maximized connectivity between the highest density population centers within a region, therefore promoting resiliency. This resulted in delineation of areas within seven geographical regions, *i.e.,* critical habitat units distributed across the islands of Kauaʻi, Maui, and Hawaiʻi. In addition, we delineated areas within the Kula Unit on east Maui based on the National Park Service and Maui Forest Bird Recovery Project dataset (Judge et al. 2019, p. 34), as this area was not well surveyed until recently and, therefore, was not included in the Scott et al. 1986 dataset. Next, within each of the units, we determined whether the area delineated was large enough to support a highly resilient population of ʻiʻiwi. Although the viable population size of ʻiʻiwi is unknown, a population of 5,000 is a generalized estimate of population size required for long-term viability for a range of vertebrate species (Traill et al. 2010, p. 31). We used this estimate to ensure that, within each unit, the designation included sufficient habitat to support highly resilient populations.

We calculated the area required to support a highly resilient population by multiplying regionally specific population densities by 5,000. For all units except the Alakaʻi Plateau Unit on Kauaʻi, we used the current highest density estimate for that respective unit. In the Alakaʻi region,ʻiʻiwi range contraction and population decline has been precipitous over the last 20 years due to avian disease; however, abundant habitat still exists and carrying capacity is high, therefore we used historical densities to maintain this critical habitat area for ʻiʻiwi. Specifically, we used the average of the interior and exterior survey densities for the Alakaʻi Plateau survey area from the year 2000 as the most representative of ʻiʻiwi density and habitat carrying capacity (Paxton et al. 2013, p. 57). Year 2000 survey data were used for the Alakaʻi Plateau area because this survey data point represents the most recent survey data prior to the rapid population decline of ʻiʻiwi beginning around year 2000, due primarily to avian disease.

Through further analysis, including a review of satellite imagery and the area required to support long-term viability for a range of vertebrate species (Traill et al. 2010, p. 31), we determined that two geographical regions, the West Maui region and the Kohala region on Hawaiʻi Island, were not large enough to support a population of 5,000 birds. Therefore, we did not delineate critical habitat within these two regions.

Because our critical habitat areas concentrate on areas of high ʻiʻiwi density as surveyed in the 1970s and 80s, we used satellite imagery and land management information to refine the larger contiguous areas containing high ʻiʻiwi densities. Specifically, we removed all parcels that were smaller than 1,235 acres (ac) (500 hectares (ha)), unless they were owned by a State or Federal agency, or already managed for conservation. Small private parcels were found to have negligible identified physical or biological features essential for ʻiʻiwi conservation and represented a small proportion of the area that otherwise meets our criteria for critical habitat designation. In order to provide for adequate ʻiʻiwi foraging areas encompassing one or more physical and biological features and prevent an artificial range constriction of high densities of ʻiʻiwi, the delineated critical habitat area in every region is greater than the habitat area needed to support the conservation of the species. In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

1. Habitat contains primarily mesic and wet forest ecosystem dominated by ʻōhiʻa and koa;

2. Area has high population density of ʻiʻiwi, defined as more than 100 birds/

km², which is a proxy for multiple patches of seasonally flowering trees including ʻōhiʻa and māmane and/or shrubs that collectively provide a year-round nectar source; and

3. Each regional area meeting criteria 1 and 2 above is able to support at least 5,000 birds.

We then removed the smallest parcels (less than 1,235 ac (500 ha)) in private ownership within larger contiguous areas and all areas that were smaller than 62 ac (25 ha) and discontinuous from larger habitat units.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for ʻiʻiwi. 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 (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species.

Seven units are proposed for designation based on one or more of the physical or biological features being present to support ʻiʻiwi. Some units contain only some of the physical or biological features necessary to support the ʻiʻiwi's use of that habitat. All units contain at least one of the identified physical or biological features and support multiple life-history processes for ʻiʻiwi.

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 *https://www.regulations.gov* at Docket No. FWS–R1–ES–2022–0144.

Proposed Critical Habitat Designation

We are proposing seven units as critical habitat for the ʻiʻiwi. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the ʻiʻiwi. The seven units we propose as critical habitat are: (1) Alakaʻi Plateau; (2) Kula; (3) East Haleakalā; (4) Windward Hawaiʻi; (5) Kaʻū; (6) South Kona; and (7) North Kona. All units were occupied at the time of listing and are currently occupied. Table 1 shows the proposed critical habitat units, their ownership, and the approximate area of each unit.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR ʻIʻIWI

[Area estimates reflect all land within critical habitat units]

Unit	Occupied	Landowner	Total area (ac (ha))	Area of overlap with existing critical habitat (ac (ha))
Alakaʻi Plateau (Kauaʻi Island)				
Alakaʻi Plateau	Yes	State	10,359 (4,192)	9,262 (3,748)
Alakaʻi Plateau	Yes	Private	2,150 (870)	131 (53)
Total			12,510 (5,063)	9,393 (3,801)
Kula (Maui Island)				
Kula	Yes	State	4,396 (1,779)	4,346 (1,759)
Kula	Yes	Private	830 (336)	825 (334)
Total			5,226 (2,115)	5,171 (2,093)
East Haleakalā (Maui Island)				
East Haleakalā	Yes	Federal	5,670 (2,294)	5,666 (2,293)
East Haleakalā	Yes	State	10,283 (4,162)	10,265 (4,154)
East Haleakalā	Yes	Private	3,440 (1,392)	20 (8)
Total			19,393 (7,848)	15,951 (6,455)
Windward Hawaiʻi (Hawaiʻi Island)				
Windward	Yes	Federal	34,694 (14,040)	24,061 (9,737)
Windward	Yes	State	91,547 (37,048)	36,202 (14,650)
Windward	Yes	Private	14,844 (6,007)	514 (208)
Total			141,085 (57,095)	60,777 (24,595)
Kaʻū (Hawaiʻi Island)				
Kaʻū	Yes	State	32,059 (12,974)	5,498 (2,225)
Kaʻū	Yes	Private	399 (162)	0 (0)

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR ‘I‘IWI—Continued

[Area estimates reflect all land within critical habitat units]

Unit	Occupied	Landowner	Total area (ac (ha))	Area of overlap with existing critical habitat (ac (ha))
Total	.....	.....	32,458 (13,136)	5,498 (2,225)
South Kona (Hawai‘i Island)				
South Kona	Yes	Federal	8,234 (3,332)	3,447 (1,395)
South Kona	Yes	State	8,357 (3,382)	2,861 (1,158)
South Kona	Yes	Private	34,785 (14,077)	148 (60)
Total	.....	.....	51,376 (20,791)	6,456 (2,613)
North Kona (Hawai‘i Island)				
North Kona	Yes	State	9,457 (3,827)	2,982 (1,207)
North Kona	Yes	Private	4,142 (1,676)	47 (19)
Total	.....	.....	13,599 (5,503)	3,029 (1,226)

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the ‘i‘iwi, below.

Alaka‘i Plateau Unit

The Alaka‘i Plateau Unit consists of 12,510 ac (5,063 ha) of montane wet forest ecosystem from Koke‘e State Park to the summit of Mount Wai‘ale‘ale, in Kaua‘i County. The unit consists of State lands within Alaka‘i Wilderness Preserve, Nā Pali-Kona Forest Reserve, and Hono O Nā Pali Natural Area Reserve, and some private land. State lands comprise approximately 83 percent and private land approximately 17 percent of the Alaka‘i Plateau Unit. Approximately 75.1 percent, or 9,393 ac (3,801 ha) of the Alaka‘i Plateau Unit is within already designated critical habitat for species other than the ‘i‘iwi. This unit is essential for maintaining the geographical range of the ‘i‘iwi and, therefore, contributing to the redundancy and representation necessary for species’ recovery. In particular, the Kaua‘i ‘i‘iwi population is important for maintaining the species’ genetic diversity, as it is likely there is little or no genetic exchange between ‘i‘iwi on Kaua‘i Island and Maui Island, the nearest island to Kaua‘i with a substantial ‘i‘iwi population. ‘I‘iwi is not known to fly long distances over open water and the two islands are separated by over 200 miles (mi) (322 kilometers (km)) of open ocean. Threats identified within Alaka‘i Plateau Unit include avian disease, habitat degradation due to rooting by feral ungulates; intrusion of ecosystem-altering invasive plants; and the rapid ‘ōhi‘a death fungal disease. Special management considerations or protection measures to reduce or alleviate threats may include mosquito control, feral ungulate control, invasive plant control, and measures to reduce the spread of rapid ‘ōhi‘a death (see Special Management Considerations or Protection, above). There are five land parcels defined by landownership within Alaka’i Plateau Unit: State of Hawaii Department of Land and Natural Resources (DLNR), Alaka‘i Wilderness Preserve and Nā Pali-Kona Forest Reserve and Hono O Nā Pali Natural Area Reserve total 10,359 ac (4,192 ha); Alexander & Baldwin, Inc. total 203 ac (82 ha); and Robinson Family Partners total 1,948 ac (788 ha).

Kula Unit

The Kula Unit consists of 5,226 ac (2,115 ha) on the west slope of Haleakalā Volcano, in Maui County. This unit consists of State lands within Kula Forest Reserve and the Papa‘anui Tract of Kahikinui Forest Reserve, and some private land. State lands comprise approximately 84 percent, and private land approximately 16 percent, of the Kula Unit. Approximately 99 percent, or 5,171 ac (2,093 ha), of the Kula Unit is within already designated critical habitat for species other than the ‘i‘iwi. The Kula Unit is comprised of mixed introduced/native mesic montane forest with sub-alpine shrubland (Judge et al. 2019, p. 7), representing different habitat types than other units, which are predominantly native wet montane forest. This unit is essential for maintaining the geographical range, as well as the ecological and behavioral diversity, of the species, therefore contributing to the redundancy and representation necessary for species’ recovery. Threats identified within Kula Unit include avian disease, habitat degradation due to rooting by feral ungulates; intrusion of ecosystem-altering, invasive plants; and fire. Special management considerations or protection measures to reduce or alleviate threats may include mosquito control, ungulate control, invasive plant control, and fire management planning and wildfire response (see Special Management Considerations or Protection, above). There are three land parcels defined by landownership within Kula Unit: DLNR, Kula Forest Reserve and Papa‘anui Tract of Kahikinui Forest Reserve total 3,518 ac (1,424 ha); DLNR, Kula Forest Reserve is 878 ac (355 ha); and Ka‘ono‘ulu Ranch is 830 ac (336 ha).

East Haleakalā Unit

The East Haleakalā Unit consists of 19,393 ac (7,848 ha) on the north and east slopes of Haleakalā Volcano, Maui County. This unit consists of Federal lands within Haleakalā National Park; State lands within Ko‘olau Forest Reserve, Hāna Forest Reserve, Kīpahulu Forest Reserve, and Hanawī Natural Area Reserve; and some private lands. Federal lands comprise approximately 29 percent, State lands approximately 53 percent, and private land approximately 18 percent of the East Haleakalā Unit. Approximately 82 percent, or 15,951 ac (6,455 ha), of the Haleakalā Unit is within already designated critical habitat for species other than the ‘i‘iwi. The Haleakalā Unit is comprised predominantly of native wet montane forest and some native sub-alpine shrubland. This unit is essential for maintaining the geographical range, as well as the ecological and behavioral diversity of

the species, therefore contributing to the redundancy and representation necessary for species' recovery. Threats identified within East Haleakalā Unit include avian disease, habitat degradation due to rooting by feral ungulates; intrusion of ecosystem-altering, invasive plants; and fire. Special management considerations or protection measures to reduce or alleviate threats may include mosquito control, ungulate control, invasive plant control, and fire management planning and wildfire response (see Special Management Considerations or Protection, above). There are seven land parcels defined by landownership within East Haleakalā Unit: Haleakalā Ranch Company is 1,113 ac (451 ha); East Maui Irrigation, Inc. is 2,327 ac (942 ha); DLNR, Koʻolau Forest Reserve is 4,780 ac (1,934 ha); DLNR, Hanawī Natural Area Reserve is 3,145 ac (1,273 ha); DLNR, Hāna Forest Reserve is 2,006 ac (812 ha); DLNR, Kīpahulu Forest Reserve is 352 ac (142 ha); and Haleakalā National Park is 5,670 ac (2,294 ha).

Windward Hawai'i Unit

The Windward Hawai'i Unit consists of 141,085 ac (57,095 ha) on the east slopes of Mauna Kea and Mauna Loa Volcanos, Hawai'i County. This unit consists of Federal lands within Hawai'i Volcanoes National Park and Hakalau Forest National Wildlife Refuge, Hakalau Forest Unit; State lands within Kapāpala Forest Reserve, Upper Waiākea Forest Reserve, Hilo Forest Reserve, Manowaialeʻe Forest Reserve, Mauna Kea Forest Reserve, Puʻu Makaʻala Natural Area Reserve, and Laupāhoehoe Natural Area Reserve; and lands administered by the Department of Hawaiian Homelands (DHHL); and some private lands. Federal lands comprise approximately 25 percent, State lands approximately 67 percent, and private land approximately 8 percent of the Windward Hawai'i Unit. Approximately 43 percent, or 60,777 ac (24,595 ha) of the Windward Hawai'i Unit is within already designated critical habitat for species other than the 'i'iwi. The Windward Hawai'i Unit is comprised predominantly of native wet montane forest and some higher elevations native mesic montane forest. The Windward Hawai'i Unit contains more than half of the 'i'iwi population Statewide and has the highest 'i'iwi densities within the State (Scott et al. 1986, p. 160). Approximately 348,579 'i'iwi, or 57.8 percent of the entire Statewide 'i'iwi population occupy the Windward Hawai'i Unit (Paxton et al. 2013, p. 10). This unit is essential for maintaining the species' geographical range, contributing to the redundancy and representation necessary for its recovery. Threats identified within Windward Hawai'i Unit include avian disease, habitat degradation due to rooting by feral ungulates; intrusion of ecosystem-altering, invasive plants; fire; and rapid 'ōhi'a death. Special management considerations or protection measures to reduce or alleviate threats may include mosquito control, ungulate control, invasive plant control, fire management planning and wildfire response; and measures to reduce the spread of rapid 'ōhi'a death (see Special Management Considerations or Protection, above). There are eighteen land parcels defined by landownership within Windward Hawai'i Unit: Hawai'i Volcanoes National Park total 9,463 ac (3,830 ha) over two parcels; Kamehameha Schools total 13,308 ac (5,386 ha) over two parcels; DLNR, Kapāpala Forest Reserve is 588 ac (238 ha); DLNR, Upper Waiākea Forest Reserve and Puʻu Makaʻala Natural Area Reserve is 71,836 ac (29,071 ha); Hakalau Forest National Wildlife Refuge, Hakalau Forest Unit is 25,231 ac (10,211 ha) over two parcels; DLNR, Hilo Forest Reserve, Kaiwiki Section is 71 ac (29 ha); DLNR, Hilo Forest Reserve, Piha Section is 2,420 ac (979 ha); DLNR, Hilo Forest Reserve, Laupāhoehoe Section and Laupāhoehoe Natural Area Reserve is 7,680 ac (3,108 ha); Department of Hawaiian Homelands is 4,035 ac (1,633 ha) over two parcels; DLNR, Hilo Forest Reserve, Humuʻula Section is 2,768 ac (1,120 ha); DLNR, Manowaialeʻe Forest Reserve is 672 ac (272 ha); DLNR, Mauna Kea Forest Reserve is 1,477 ac (598 ha); Kūkaʻiau Ranch is 87 ac (35 ha); and Parker Ranch is 1,449 ac (586 ha).

Kaʻū Unit

The Kaʻū Unit consists of 32,458 ac (13,136 ha) on the southeast slope of Mauna Loa Volcano, Hawai'i County. This unit consists of State lands within Kaʻū Forest Reserve and Kapāpala Forest Reserve, and some private lands. State lands comprise approximately 99 percent, and private land approximately 1 percent of the Kaʻū Unit. Approximately 17 percent, or 5,498 ac (2,225 ha), of the Kaʻu Unit is within already designated critical habitat for species other than the 'i'iwi. The Kaʻū Unit is comprised of native wet montane forest in the southern portion, transitioning to native mesic montane forest in the northern portion of the unit. Native forest in the Kaʻū Unit provides habitat connectivity between 'i'iwi that inhabit the Windward Hawai'i Unit and 'i'iwi that inhabit the South Kona Unit. The Kaʻū Unit is essential for maintaining the geographical range of the species and redundancy and representation necessary for species' recovery. Threats identified within Kaʻū Unit include avian disease, habitat degradation due to rooting by feral ungulates; intrusion of ecosystem-altering, invasive plants; fire; and rapid 'ōhi'a death. Special management considerations or protection measures to reduce or alleviate threats may include mosquito control, ungulate control, invasive plant control, fire management planning and wildfire response; and measures to reduce the spread of rapid 'ōhi'a death (see Special Management Considerations or Protection, above). There are five land parcels defined by landownership within Kaʻū Unit: DLNR, Kaʻū Forest Reserve is 31,414 ac (12,713 ha); DLNR, Kapāpala Forest Reserve is 546 ac (221 ha); DLNR, Kaʻū Forest Reserve is 99 ac (40 ha); and The Nature Conservancy total 399 ac (162 ha) over two parcels.

South Kona Unit

The South Kona Unit consists of 51,376 ac (20,791 ha) on the west slope of Mauna Loa Volcano, Hawaii County. This unit consists of Federal lands within Hakalau Forest National Wildlife Refuge, Kona Forest Unit; State lands within South Kona Forest Reserve, Waiea Natural Area Reserve, and Kipāhoehoe Natural Area Reserve; and private lands. Federal lands comprise approximately 16 percent, State lands comprise approximately 16 percent, and private land approximately 68 percent of the South Kona Unit. Approximately 13 percent, or 6,456 ac (2,613 ha), of the South Kona Unit is within already designated critical habitat for species other than the 'i'iwi. The South Kona Unit is comprised of native wet lowland forest at lower elevations and native wet and mesic montane forest at middle and upper elevations. Unlike other units, the South Kona Unit contains large areas of native wet lowland forest at elevations as low as 2,500 ft (762 m), representing the species' behavioral and ecological diversity. This unit is essential for maintaining the geographical range, as well as the diversity, of the species, therefore contributing to the redundancy and representation necessary for species' recovery. Threats identified within South Kona Unit include avian disease, habitat degradation due to rooting by feral ungulates; intrusion of ecosystem-altering, invasive plants; fire; and rapid 'ōhi'a death. Special management considerations or protection measures to reduce or alleviate threats may include mosquito control, ungulate control,

invasive plant control, fire management planning and wildfire response; and measures to reduce the spread of rapid ʻōhiʻa death (see Special Management Considerations or Protection, above). There are eighteen land parcels defined by landownership within South Kona Unit: Kealakekua Mountain Reserve LLC total 5,801 ac (2,348 ha) over two parcels; Kamehameha Schools total 16,209 ac (6,560 ha) over three parcels; Kealia Ranch is 1,758 ac (712 ha); Hakalau Forest National Wildlife Refuge, Kona Forest Unit is 8,234 ac (3,332 ha) over two parcels; DLNR, Waiea Natural Area Reserve is 939 ac (380 ha); DLNR, South Kona Forest Reserve, Kaʻohe Section is 1,052 ac (426 ha); DLNR, South Kona Forest Reserve, Kukuiopaʻe Section is 2,416 ac (978 ha); DLNR, South Kona Forest Reserve, ʻOlelomoana Ophihihali Section is 1,392 ac (563 ha); Yee Hop Ltd., Yee Hop Ranch is 5,317 ac (2,152 ha) over two parcels; DLNR, Kipāhoehoe Natural Area Reserve is 225 ac (91 ha); The Nature Conservancy is 5,700 ac (2,307 ha); DLNR, South Kona Forest Reserve, Kapua-Manukā Section is 1,010 ac (409 ha); and DLNR, Manukā Natural Area Reserve is 1,323 ac (535 ha).

North Kona Unit

The North Kona Unit consists of 13,599 ac (5,503 ha) on the north, west, and south slopes of Hualālai Volcano, Hawaii County. This unit consists of State lands within the Puʻu Waʻawaʻa Forest Bird Sanctuary, Puʻu Waʻawaʻa Forest Reserve, and Honuaʻula Forest Reserve, and some private lands. State lands comprise approximately 70 percent, and private land approximately 30 percent of the North Kona Unit. Approximately 22 percent, or 3,029 ac (1,226 ha), of the North Kona Unit is within already designated critical habitat for species other than the ʻiʻiwi. The North Kona Unit is comprised of mesic montane forest on the north slope and native wet and mesic montane forest on the west and south slopes of Hualālai Volcano. Collectively, the North Kona Unit is essential for maintaining the geographical range, as well as the ecological and behavioral diversity, of the species, therefore contributing to the redundancy and representation necessary for species' recovery. Threats identified within North Kona Unit include habitat degradation due to rooting by feral ungulates; intrusion of ecosystem-altering, invasive plants; fire; and rapid ʻōhiʻa death. Special management considerations or protection measures to reduce or alleviate threats may include ungulate control, invasive plant control, fire management planning and wildfire response; and measures to reduce the spread of rapid ʻōhiʻa death (see Special Management Considerations or Protection, above). There are four land parcels defined by landownership within North Kona Unit: DLNR, Puʻu Waʻawaʻa Forest Bird Sanctuary and Puʻu Waʻawaʻa Forest Reserve total 4,214 ac (1,705 ha); DLNR, Honuaʻula Forest Reserve is 5,243 ac (2,122 ha); and Kamehameha Schools total 4,142 ac (1,676 ha) over two parcels.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 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 Congress also enacted some exceptions in 2018 to the requirement to reinitiate consultation on certain land management plans on the basis of a new species listing or new designation of critical habitat that may be affected by the subject federal action. See 2018 Consolidated Appropriations Act, Public Law 115–141, Div, O, 132 Stat. 1059 (2018).

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 we 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 significantly diminish foraging and nesting opportunities for the ʻiʻiwi. While we are currently unaware of any planned activities involving Federal actions that are of sufficient magnitude to impact the essential physical or biological features, known activities that have the potential to impact components of these features include, but are not limited to, road construction, development, crop production, cattle grazing, and forest extraction. In addition to the direct effects of tree removal on ʻiʻiwi habitat, these activities also contribute to habitat degradation through the introduction and spread of nonnative species and compounding factors including diseases. Invasive plants outcompete and displace native ʻōhiʻa and koa trees used by native forest birds for foraging and nesting. Feral ungulates degrade native forest by spreading nonnative plant seeds and grazing on and trampling native vegetation, contributing to soil erosion (Mountainspring 1986, p. 95; Camp et al. 2010, p. 198). In addition, ʻōhiʻa trees are impacted by several diseases and natural processes, including ʻōhiʻa dieback, ʻōhiʻa rust, and rapid ʻōhiʻa death (ROD), the effects of which are likely compounded by each other and with nonnative species and climate change (Mueller-Dombois 1986, pp. 238–239; Anderson 2012, pp. 1–2; Friday et al. 2015, pp. 1–3; Keith et al. 2015, p. 1).

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 Improvement Act of 1997 (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. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service. We also refer to a 2008 Department of the Interior Solicitor's opinion entitled, ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to potentially exclude these areas, as well as decisions not to potentially exclude, to demonstrate that the decision is reasonable. We will make a final determination in the final rule on whether or not we will exclude these areas.

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. 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 (*e.g.,* 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 (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental

impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

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. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a ''significant'' rulemaking, and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of greater than $100 million in any given year (section 3(f)(1)). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for the ‘i‘iwi is likely to exceed the economically significant threshold.

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 ‘i‘iwi (Industrial Economics, Incorporated 2021). 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 (*i.e.,* 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. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental economic impact above and beyond the impacts of listing the species. Therefore, the screening analysis focuses on areas of unoccupied critical habitat. If there are any unoccupied units in the proposed critical habitat designation, the screening analysis assesses whether any additional management or conservation efforts may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the ‘i‘iwi; our DEA is summarized in the narrative below.

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 ‘i‘iwi, first we identified, in the IEM dated July 29, 2022, probable incremental economic impacts associated with the following categories of activities: (1) landscape-level avian malaria control; (2) emergency response during volcanic activity; and (3) activities on forest reserve lands, including vegetation management along roadways, water lines, and utility lines; tree removal for building maintenance and removal of hazard trees; harvest of forest products; operation of recreational vehicles; and native plant collection for cultural purposes.

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 only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the ‘i‘iwi is 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 we finalize this proposed critical habitat designation, our 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 (*i.e.,* difference between the jeopardy and adverse modification standards) for the ‘i‘iwi's critical habitat. The following specific circumstances 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 likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the species itself. 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 ‘i‘iwi includes 7 units, subdivided into 60 subunits, totaling approximately 275,647 ac (111,554 ha). Lands within the designation are under Federal (18 percent), State (60 percent), and private (22 percent) ownership. All units and subunits were occupied at the time of listing and are currently occupied. The incremental costs of designating critical habitat for the ‘i‘iwi are likely to include additional administrative effort associated with section 7 consultations, as well as project modifications. There may also be incremental costs outside of the section 7 consultation process.

The additional administrative effort associated with considering adverse modification during the section 7 consultation process was estimated using historical consultation data. We estimate up to 11 technical assistances, 5 informal consultations, and 3 formal annually over the next 10 years. The maximum annual cost associated with these consultations is estimated not to

exceed $34,000 annually (2022 dollars). Therefore, the annual administrative burden is very unlikely to exceed $100 million or be considered economically significant.

In many instances, critical habitat designation is not likely to change our recommendation for project modification during future consultations. However, in some instances, we may recommend modifications associated specifically with avoiding adverse modification to critical habitat.

- For activities with a Federal nexus that would involve entry into critical habitat susceptible to rapid ʻōhiʻa death, we anticipate recommending disinfecting gear to limit the transmission of fungal pathogens associated with rapid ʻōhiʻa death and limiting access into pristine areas. While we would not make these recommendations during a consultation that only considered jeopardy, they are part of best practices promoted by the Service and widely adopted by other agencies and conservation organizations. Therefore, the recommendations are unlikely to result in incremental costs because they are likely already part of standard protocols absent critical habitat.
- For activities with a Federal nexus involving koa thinning and ʻōhiʻa harvest, we may recommend limiting forest extraction year-round to avoid adverse modification. Absent critical habitat, we would likely only recommend limiting forest extraction during the ʻiʻiwi breeding season. Data are not available to develop a potential range of costs per year associated with this limitation. However, given that the Statewide value of forest extraction is estimated to be only $47.6 million (2022 dollars), and that baseline forest extraction in proposed critical habitat is likely to constitute a small fraction of the total forest extraction across the State, it is very unlikely that the costs attributable to critical habitat for the ʻiʻiwi will exceed $100 million annually.
- In unpredictable cases, a Federal agency may need to act in response to volcanic activity to save human lives and would subsequently consult with the Service under emergency consultation provisions. Data are not available to forecast costs associated with modifications to or restoration activities following emergency response efforts during volcanic activity. Even if historical costs were available, the incremental costs associated with any given emergency response activity are likely to be highly context-specific.

Incremental costs may occur outside of the section 7 consultation process if the designation of critical habitat triggers additional requirements or project modifications under State or local laws, regulations, or management strategies. These types of costs typically occur if the designation increases awareness of the presence of the species or the need for protection of its habitat. Designation of critical habitat for the ʻiʻiwi has the potential to result in (1) a decrease in recreational access allowed in State-managed forest reserves, and (2) an increase in permitting requirements for development in proposed critical habitat. Although we acknowledge the potential for these types of costs, the likelihood of these potential future effects is uncertain, and data with which to estimate incremental costs is unavailable. Similarly, there may be economic impacts associated with the perceived effects of critical habitat on land values. However, the likelihood and magnitude of such effects for this purpose are uncertain.

In summary, while the specific costs of critical habitat designation for the ʻiʻiwi are subject to uncertainty, it is unlikely that, if adopted as proposed, the rulemaking would generate costs exceeding $100 million in a single year. Therefore, this proposed rule is unlikely to meet the threshold for an economically significant rule, with regard to costs, under E.O. 12866.

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 424.19. 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 this 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 (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), 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 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.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for ʻiʻiwi are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. 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, social, or other impacts that might occur because of the designation.

When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. In the case of ʻiʻiwi, the benefits of critical habitat include public awareness of the presence of ʻiʻiwi and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for ʻiʻiwi due to protection from destruction or adverse modification of critical habitat. Continued implementation of an ongoing management plan, which provides conservation equal to or more than the protections that result from a critical habitat designation, would reduce those benefits of including that specific area in the critical habitat designation.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Watershed Partnerships—An important factor for our decision to consider an area for proposed exclusion is whether the landowner participates in a watershed partnership. In 2003, the State of Hawaii formally established the Hawaiʻi Association of Watershed Partnerships consisting of over 60 public and private landowners throughout the State, committed to long-term protection and conservation of watershed areas. These watershed partnerships each have a conservation management plan, which is updated every several years to include measurable objectives and a budget. Financial support for the watershed partnerships include various long-term State funds, and other Federal and private sources. Of the 10 watershed partnerships in operation, 3 have lands within the proposed critical habitat designation: Kauaʻi Watershed Alliance, Mauna Kea Watershed Alliance, and Three Mountain Alliance. These watershed partnerships fund and conduct conservation efforts that support the ʻiʻiwi, including ungulate control and removal, and invasive weed management.

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitats. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

CCAAs and SHAs are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an ''enhancement of survival'' permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. We also provide enrollees assurances that we will not impose further land—, water—, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary section 4(b)(2) exclusion analysis based on permitted conservation plans (such as HCPs, SHAs, and CCAAs), we anticipate consistently excluding such areas if incidental take caused by the activities in those areas is covered by the permit under section 10 of the Act and the HCP/SHA/CCAA meets all of the following three factors (see the 2016 Policy for additional details):

a. The permittee is properly implementing the HCP/SHA/CCAA and is expected to continue to do so for the term of the agreement. An HCP/SHA/CCAA is properly implemented if the permittee is and has been fully implementing the commitments and provisions in the HCP/SHA/CCAA, implementing agreement, and permit.

b. The species for which critical habitat is being designated is a covered species in the HCP/SHA/CCAA, or is very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the HCP/SHA/CCAA would also protect the habitat features of the similar species.

c. The HCP/SHA/CCAA specifically addresses that species' habitat and meets the conservation needs of the species in the planning area.

This proposed critical habitat designation includes areas that are covered by the following permitted plan providing for the conservation of ʻiʻiwi:

Safe Harbor Agreement Trustees of the Estate of Bernice P. Bishop, DBA Kamehameha Schools Keauhou and Kīlauea Forest Lands Hawaiʻi Island, Hawaii (Kamehameha Schools Keauhou and Kīlauea Forest Lands Safe Harbor Agreement)—The permit holder for this SHA is Kamehameha Schools. Kamehameha Schools was established in 1887, through the will of Princess Bernice Pauahi Paki Bishop. Kamehameha Schools owns over

362,000 ac (146,496 ha) of land throughout Hawaii and part of Kamehameha Schools' mission is to protect Hawaii's environment through recognition of the significant cultural value of this land and its unique flora and fauna. In 2017, the SHA was approved by the Service and Hawai'i Department of Land and Natural Resources for the Kamehameha School's Keauhou and Kīlauea Forest lands, which comprise 32,280 ac (13,063 ha) on the east slope of Mauna Loa Volcano, on the island of Hawai'i. Under the SHA, koa (*Acacia koa*) tree silviculture will be conducted, including stand improvement through selective harvest and establishment of new or improvement of existing forest in formerly logged areas and degraded pasture lands. Koa forestry, as described in the SHA, increases soil-water retention capacity and provides nesting and foraging habitat for Hawaiian forest birds, including the 'i'iwi (Kamehameha Schools 2017, pp. 22–23). Kamehameha Schools has agreed to conduct silviculture practices in a way to ensure minimal impact to covered forest birds ('i'iwi, akiapōlā'au (*Hemignathus wilsoni*), Hawaii creeper (*Loxops mana*), Hawaii 'ākepa (*Loxops coccineus*), and Hawaiian hawk or 'io (*Buteo solitarius*)) if those species become established in koa stands, through avoidance of harvest when birds are nesting.

We have identified the following areas that we have reason to consider excluding because of the SHA:

Windward Hawai'i Unit—(Kamehameha Schools)—The Kamehameha Schools are responsible for 13,308 ac (5,386 ha) of land included in the proposed designation for 'i'iwi within the Windward Hawai'i Unit. Conservation management actions on these lands occur under the Kamehameha Schools Keauhou and Kīlauea Forest Lands SHA. This SHA is implemented effectively and specifically addresses 'i'iwi habitat and meets the conservation needs of 'i'iwi in the planning area. In addition to this SHA, these lands in the Windward Hawai'i Unit are also covered under two non-permitted conservation plans, the Kamehameha Schools 'Āina Pauahi Natural Resources Management Program and the Three Mountain Alliance Management Plan. Both of these non-permitted conservation plans are summarized below in Non-Permitted Conservation Plans, Agreements, or Partnerships. We are considering 13,308 ac (5,386 ha) in the Windward Hawai'i Unit for exclusion from the final critical habitat designation for the 'i'iwi because conservation actions occurring on the ground, including forest restoration, invasive predator control, ungulate fence installation and maintenance, and control of invasive introduced plants, are providing a conservation benefit to 'i'iwi.

We will work with Kamehameha Schools and the Three Mountain Alliance Watershed Partnership throughout the public comment period and during development of the final designation of critical habitat for 'i'iwi. We seek comments on whether the existing management and conservation efforts of Kamehameha Schools and the Three Mountain Alliance partners meet our criteria for exclusion from the final designation under section 4(b)(2) of the Act.

Non-Permitted Conservation Plans, Agreements, or Partnerships

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

Shown below is a non-exhaustive list of factors that we consider in evaluating how non-permitted plans or agreements affect the benefits of inclusion or exclusion. These are not required elements of plans or agreements. Rather, they are some of the factors we may consider, and not all of these factors apply to every plan or agreement.

(i) The degree to which the record of the plan, or information provided by proponents of an exclusion, supports a conclusion that a critical habitat designation would impair the realization of the benefits expected from the plan, agreement, or partnership.

(ii) The extent of public participation in the development of the conservation plan.

(iii) The degree to which agency review and required determinations (*e.g.,* State regulatory requirements) have been completed, as necessary and appropriate.

(iv) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required.

(v) The demonstrated implementation and success of the chosen mechanism.

(vi) The degree to which the plan or agreement provides for the conservation of the essential physical or biological features for the species.

(vii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented.

(viii) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

The proposed critical habitat designation includes areas that are covered by the following non-permitted management plans providing for the conservation of 'i'iwi:

Kaua'i Watershed Alliance Management Plan, Overall Management Strategy (2012)—The Kaua'i Watershed Alliance was formed in 2003, including major landowners within the conservation district boundary on Kaua'i and encompassing most land with native forest on the island of Kaua'i (Kaua'i Watershed Alliance 2012, entire). The Kaua'i Watershed Alliance Management Plan is designed to protect over 25,000 ac (10,117 ha) of forest land through construction of ungulate fences; ungulate removal; fence line surveys; and control of invasive, introduced plants (Kaua'i Watershed Alliance 2012, entire). These conservation actions are beneficial in conserving native and introduced forests used for nesting and foraging by 'i'iwi.

Kaua'i Forest Bird Recovery Project—The Kaua'i Forest Bird Recovery Project is a joint collaborative program between the State of Hawaii's Division of Forestry and Wildlife and the Pacific Studies Cooperative Unit of the University of Hawai'i. It is funded and supported by numerous partners including the Service, Division of Forestry and Wildlife, and several other organizations and individuals (Kaua'i Forest Bird Recovery Project 2022, entire). The Kaua'i Forest Bird Recovery Project is committed to monitoring Kaua'i forest bird reproductive success, conducting invasive predator control, and promoting knowledge, appreciation, and conservation of Kaua'i's native forest birds and the potential of different management strategies for recovering their populations. These conservation actions are beneficial in educating the public and conserving native forest that is used for nesting and foraging by 'i'iwi.

Kula Forest Reserve and the Papa'anui Tract of Kahikinui Forest Reserve Management Plan—The State of Hawaii's Division of Forestry and Wildlife manages the Kula Conservation Game Management Area on the south

slope of Haleakalā Volcano, east Maui, under the Kula Forest Reserve and the Papa‘anui Tract of Kahikinui Forest Reserve Management Plan (DOFAW 2017, entire). Management of feral ungulates by public hunting on the conservation game management area benefits mixed introduced and native forest and native shrublands by reducing ungulate grazing and rooting and trampling of trees, shrubs, and other vegetation. Ungulate control within the conservation game management area benefits habitat ‘i‘iwi use for nesting and foraging by improving forest regeneration and reducing breeding sites for introduced southern house mosquitoes that carry avian malaria.

Leeward Haleakalā Watershed Restoration Partnership—Formed in 2003, the Leeward Haleakala Watershed Restoration Partnership is a coalition of 11 private and public landowners and supporting agencies that are working to protect and restore watershed areas on leeward Haleakalā Volcano, east Maui (Leeward Haleakalā Watershed Restoration Partnership 2022, entire). The partnership's land management goals for the leeward Haleakalā watershed include: (1) restore native koa forests to provide increased water quantity and quality, (2) conserve unique endemic plants and animals, (3) protect important Hawaiian cultural resources, and (4) allow diversification of Maui's rural economy. Large areas of mesic koa forest and mixed koa/‘ohi‘i a forest of leeward east Maui was degraded by cattle grazing over the last century, reducing the amount of available habitat for ‘i‘iwi. The Leeward Haleakalā Watershed Restoration Partnership's efforts to restore koa forests and conserve endemic plants and animals that comprise native ecosystems benefit ‘i‘iwi by improving regeneration of forest and shrubland habitats used by the species for nesting and foraging.

The Nature Conservancy Waikamoi Preserve, Long-Range Management Plan, Fiscal Years 2019–2024—The Nature Conservancy Waikamoi Preserve was established on east Maui in 1983 when Haleakalā Ranch granted a perpetual conservation easement on 5,140 ac (2,080 ha) of ranch lands to The Nature Conservancy, and the preserve was expanded in 2013, when The Nature Conservancy obtained a conservation easement on 3,721 ac (1,506 ha) of East Maui Irrigation Co. Ltd. (EMI) lands adjacent to the existing preserve. The management program for the Waikamoi Preserve is documented in The Nature Conservancy Waikamoi Preserve, Long-Range Management Plan, Fiscal Years 2019–2024 (The Nature Conservancy 2018, entire). This plan details management measures that protect, restore, and enhance rare plants and animals and their habitats within the Waikamoi Preserve and in adjacent areas. Primary management goals for the Waikamoi Preserve are to: (1) Prevent degradation of native forest and shrubland by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants; (3) conduct small mammal control and reduce the negative impacts of small mammals where possible; (4) monitor and track the biological and physical resources in the preserve, evaluate changes in these resources over time, and encourage biological and environmental research; (5) prevent extinction of rare species in the preserve; (6) build public understanding and support for the preservation of natural areas and enlist volunteer assistance for preserve management; and (7) protect the resources from fires in and around the preserve. Ungulate control benefits habitat ‘i‘iwi use for nesting and foraging by improving forest regeneration and reducing breeding sites for introduced southern house mosquitoes that carry avian malaria. Fire suppression benefits forest and shrubland habitats ‘i‘iwi use by minimizing damage to these habitats by fire. Nonnative plant control improves recruitment of native trees, and control of small mammals, particularly rats (*Rattus* spp.), reduces potential for predation of nesting ‘i‘iwi. Collectively, these actions are effective in conserving native forest and shrubland ‘i‘iwi use for nesting and foraging.

East Maui Watershed Partnership—The East Maui Watershed Partnership, formed in 1991, is a coalition of private and public landowners and supporting agencies that are working to protect and restore watershed areas on windward Haleakalā Volcano, east Maui (East Maui Watershed Partnership 2022, entire). The partnership's management goals for the East Maui Watershed Partnership include: (1) watershed resource monitoring; (2) feral animal control; (3) control of invasive, introduced plants; (4) development and maintenance of management infrastructure; and (5) development and implementation of public education and awareness programs. Since 1991, the East Maui Watershed Partnership has constructed over 7 mi (11 km) of ungulate fences protecting remote watershed areas and has removed feral ungulates from fenced areas. Ungulate control benefits habitat ‘i‘iwi use for nesting and foraging by improving forest regeneration and reducing mosquito breeding sites. Nonnative plant control improves recruitment of native trees.

Maui Forest Bird Recovery Project—The Maui Forest Bird Recovery Project (MFBRP) is a joint collaborative program between the State of Hawaii's Division of Forestry and Wildlife and the Pacific Studies Cooperative Unit of the University of Hawai‘i. MFBRP is funded and supported by numerous partners including the Service, Division of Forestry and Wildlife, and several other organizations and individuals (Maui Forest Bird Recovery Project 2022, entire). The mission of the Maui Forest Bird Recovery Project is to develop and implement techniques that recover Maui's endangered forest birds and to restore their habitats through research, development, and application of conservation techniques. These conservation actions are beneficial in conserving native forest that is used for nesting and foraging by ‘i‘iwi.

Kamehameha Schools ‘Āina Pauahi Natural Resources Management Program—Kamehameha Schools owns over 362,000 ac (146,496 ha) of land throughout Hawaii. Part of Kamehameha Schools' mission is to protect Hawaii's environment through recognition of the significant cultural value of this land and its unique flora and fauna. Accordingly, Kamehameha Schools established a sustainable stewardship policy to guide the use of its lands through their ‘Āina Pauahi Natural Resources Management Program that includes the protection and conservation of natural resources, water resources, and ancestral places (Kamehameha Schools 2022, entire). Between 2000 and 2015, Kamehameha Schools increased active stewardship of native ecosystems by over 35-fold, from 3,000 ac (1,124 ha) to 136,000 ac (55,037 ha), engaged in community collaborations to leverage external resources in support of culturally appropriate land stewardship, and developed and implemented its 2012 natural resource and cultural resource management plans representing Kamehameha Schools' responsibility to conduct prudent stewardship of the ‘āina (land). Kamehameha Schools manages some of its forested lands for income generation through sustainable koa and ‘iliahi or sandalwood (*Santalum album*) forestry and collaborates with county and other landowners in fire response planning to protect natural resources from fires. These actions promote regeneration of native forests ‘i‘iwi use for nesting and foraging and improve soil-water retention capacity and ecosystem

resilience to drying climate conditions. Fire suppression benefits forest and shrubland habitats ‘i‘iwi use for nesting and foraging by minimizing damage to these habitats by wildfire.

Three Mountain Alliance Management Plan, December 31, 2007—The Three Mountain Alliance Watershed Partnership is a coalition of private and public landowners and supporting agencies that are working to protect and restore watershed areas on Hawai‘i Island (Three Mountain Alliance 2007, entire). Lands that are managed by the Three Mountain Alliance are 1,116,300 ac (451,751 ha) on Mauna Loa, Kīlauea, and Hualālai Volcanoes or roughly 45 percent of the island of Hawai‘i. Project funding for the Three Mountain Alliance currently comes from Three Mountain Alliance members (primarily the Service, Hawaii's Division of Forestry and Wildlife, and Kamehameha Schools) and outside grants. Other Three Mountain Alliance members provide in-kind services to accomplish priority projects (*e.g.,* inmate labor, sharing personnel and equipment) (Three Mountain Alliance Management Plan, December 31, 2007, p. 56). Management under the Three Mountain Alliance Management Plan includes the following conservation actions: (1) strategic fencing and removal of ungulates; (2) regular monitoring for ungulates after fencing; (3) monitoring of habitat recovery; (4) surveys for rare taxa prior to new fence installations; (5) invasive, nonnative plant control; (6) reestablishment of native plant species; and (7) activities to reduce the threat of wildfire. Ungulate control reduces damage to ōhi‘a forests, maintains the health of tall stature trees used for ‘i‘iwi nesting, and prevents ungulates from creating breeding sites for introduced southern house mosquitoes that carry avian malaria. Control of nonnative, invasive plants and out-planting of native plants improves recruitment of native trees. Fire suppression activities reduce the damage from wildfires and protect forest and shrubland habitat ‘i‘iwi use for nesting and foraging.

Department of Hawaiian Homelands ‘Āina Mauna Legacy Program—The Department of Hawaiian Homelands is governed by the Hawaiian Homes Commission Act of 1920, enacted by the U.S. Congress to protect and improve the lives of native Hawaiians. The act created an Hawaiian Homes Commission to administer certain public lands, called Hawaiian homelands, for homesteads. The primary responsibilities of Department of Hawaiian Homelands are to serve its beneficiaries and to manage its extensive land trust, which consists of over 200,000 ac (80,937 ha) on the islands of Hawai‘i, Maui, Moloka‘i, Lāna‘i, O‘ahu, and Kaua‘i. The goal of the Department of Hawaiian Homelands' ‘Āina Mauna Legacy Program is to restore and protect approximately 56,000 ac (22,662 ha) of native Hawaiian forest on Mauna Kea Volcano on the island of Hawai‘i that is ecologically, culturally, and economically self-sustaining for the Hawaiian Homelands Trust, its beneficiaries, and the community (Department of Hawaiian Homelands 2022, pp. 1–2). The Department of Hawaiian Homelands ‘Āina Mauna Legacy Program describes activities to be conducted on Department of Hawaiian Homelands lands over the next 100 years, including native forest restoration and sustainable koa forestry; invasive plant control and remnant invasive species eradication; nonnative wildlife control and management (*i.e.,* feral ungulate control); road system, fencing, and water systems infrastructure development and maintenance; and research and community outreach. Some forest areas in lands managed under the ‘Āina Mauna Legacy Program are degraded by history of cattle grazing. Koa tree silviculture is in initial stages and will be conducted (at least during the next 100 years) on lands under this management designation, including stand improvement through selective harvest and establishment of new or improved forest in formerly logged areas and degraded pasture lands. Koa silviculture benefits habitat ‘i‘iwi use for nesting and foraging by establishing new or improved forest, increasing soil-water retention capacity, and improving ecosystem resilience to drying climate conditions. Ungulate control reduces damage to ‘ōhi‘ a forests, maintains the health of tall stature trees used for ‘i‘iwi nesting, and prevents ungulates from creating breeding sites for introduced southern house mosquitoes that carry avian malaria. Control of nonnative, invasive plants and out-planting of native plants improves recruitment of native trees.

Mauna Kea Watershed Alliance—The Mauna Kea Watershed Alliance Watershed Partnership is a coalition of private and public landowners and supporting agencies working to protect and restore watershed areas on Mauna Kea Volcano, Hawai‘i (Mauna Kea Watershed Alliance 2022, entire). Lands that are managed by the Mauna Kea Watershed Alliance include over 500,000 ac (202,343 ha) on Mauna Kea Volcano on the island of Hawai‘i. The Mauna Kea Watershed Alliance shared vision is to protect and enhance watershed ecosystems, biodiversity, and natural resources through responsible management while promoting economic sustainability and providing recreational, subsistence, educational, and research opportunities. Staff of the Mauna Kea Watershed Alliance work cooperatively with members of the alliance to achieve this shared vision. Accordingly, fencing and ungulate control, control of introduced plants that are invasive, and reforestation efforts are conducted on lands within the Mauna Kea Watershed Alliance. Ungulate control benefits habitat ‘i‘iwi use for nesting and foraging by improved forest regeneration and reduction of breeding sites for introduced southern house mosquitoes that carry avian malaria. Nonnative plant control improves recruitment of native trees, and reforestation provides ‘i‘iwi nesting and foraging habitat and increases soil-water retention capacity improving ecosystem resilience to drying climate conditions.

Kūka‘iau Ranch Conservation Easement with The Nature Conservancy and Hawai‘i Island Land Trust—Kūka‘iau Ranch is a 10,200-ac (4,128-ha) ranch on the east slope of Mauna Kea. In 2009, ranch owners donated a conservation easement on 4,500 ac (1,821 ha) of the ranch's property to The Nature Conservancy and Hawai‘i Island Land Trust (College of Tropical Agriculture and Human Resources 2009, entire). The easement covers the highest elevation areas of the ranch that comprise mostly intact native forest. The land under easement has two dominant tree species, māmane and koa. Since the conservation easement was signed in 2009, Kūka‘iau Ranch has worked with The Nature Conservancy, Hawai‘i Island Land Trust, and the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) to build ungulate fencing, remove pigs and goats, and restore native plant species. In addition, Kūka‘iau Ranch collaborates with the county and other landowners in fire response planning to protect its adjacent landowners' natural resources from fires. Ungulate control benefits habitat ‘i‘iwi use for nesting and foraging by improved forest regeneration and reduction of breeding sites for introduced southern house mosquitoes that carry avian malaria. Control of invasive, introduced plants improves recruitment of native trees. Fire suppression benefits forest and shrubland habitats ‘i‘iwi use for nesting and foraging by minimizing damage to these habitats by wildfire.

Parker Ranch Sustainable Forestry Initiative—Parker Ranch was founded in 1847, and currently encompasses over 100,000 ac (40,469 ha) of land in the Hamakua, North Kohala, and South Kohala Districts on Mauna Kea and the Kohala Mountains on the island of Hawai'i. Parker Ranch recognizes forest health as a key indicator of overall ecosystem health and, as result, announced in 2021 that it is seeking to collaborate with public and private partners to develop sustainable forestry programs on its lands (Parker Ranch 2021, entire). For its Waipunalei lands on the east slope of Mauna Kea, Parker Ranch is developing a sustainable koa forestry program and is seeking to rehabilitate forest areas damaged by history of cattle grazing (Parker Ranch 2022, entire). Koa forestry benefits forest habitat 'i'iwi use for nesting and foraging by establishing new or improved forest in formerly logged areas and degraded pasture lands, increasing soil-water retention capacity, and improving ecosystem resilience to drying climate conditions.

The Nature Conservancy Ka'ū Preserve Hawai'i Island, Long-Range Management Plan, Fiscal Years 2013–2018—The Nature Conservancy Ka'ū Preserve was established in 2002, in the Ka'ū District of the island of Hawai'i. Ka'ū Preserve is comprised of 3,511 ac (1,421 ha) in four management units within Ka'ū Forest Preserve on the southern slope of Mauna Loa Volcano. The management program for Ka'ū Preserve is documented in the The Nature Conservancy Ka'ū Preserve, Long-Range Management Plan, Fiscal Years 2013–2018 (The Nature Conservancy 2012, entire). Primary management goals for the preserve are to: (1) prevent degradation of native forest by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems by reducing the effects of nonnative plants; (3) conduct small mammal, including rodent, control and reduce the negative impacts of small mammals; (4) monitor and track the biological and physical resources in the preserve, evaluate changes in these resources over time, and encourage biological and environmental research; (5) prevent extinction of rare species in the preserve; and (6) build public understanding and support for the preservation of natural areas, and enlist volunteer assistance for preserve management. Ungulate control reduces damage to 'ōhi'a forests, maintains the health of tall stature trees used for 'i'iwi nesting, and prevents ungulates from creating breeding sites for introduced southern house mosquitoes that carry avian malaria. Fire suppression reduces the damage from wildfires and provides protection for forest and shrubland habitat that 'i'iwi use for nesting and foraging. Invasive plant control improves recruitment of native trees, and small mammal control, particularly for rats (*Rattus* spp.), reduces the potential for predation on nesting 'i'iwi.

Kealakekua Mountain Reserve Forest Legacy Program Conservation Easement with the State of Hawaii's Department of Land and Natural Resources—Once a former ranch, the Kealakekua Mountain Reserve, LLC, established the Kealakekua Mountain Reserve Forest Legacy Program Conservation Easement (conservation easement) with the State of Hawaii's Department of Land and Natural Resources in 2011 (DLNR 2022, p. 4). The conservation easement protects mesic and dryland native forest and native species on Kealakekua Mountain Reserve lands on leeward Mauna Loa Volcano on the island of Hawai'i and covers 9,000 ac (3,642 ha) of Kealakekua Mountain Reserve lands under the State's Forest Legacy Program, a Federal grant program that aids States in identification and conservation of important private forest lands that are threatened by development or fragmentation (DLNR 2022, entire). The Kealakekua Mountain Reserve management plan under the conservation easement requires harvesting limitations to ensure regeneration of native forest on its properties (dōTerra 2018, entire). In order to protect the growth and regeneration of 'iliahi or sandalwood trees, the management plan allows collection only of dead or severely damaged trees; no living sandalwood trees will be harvested at this time, which will allow existing healthy trees to grow to full maturity before they are harvested under sustainable tree management practices. The Kealakekua Mountain Reserve operates a large nursery, and various native Hawaiian trees from the nursery, including 'ōhi'a, as well as trees and shrubs that serve as hosts for sandalwood including koa, a'ali'i (*Dodonaea viscosa*), and hoawa (*Pittosporum* spp.), are being outplanted at the Kealakekua Mountain Reserve. These management actions conserve and enhance forest habitat 'i'iwi use for nesting and foraging, increase soil-water retention capacity, and improve ecosystem resilience to drying climate conditions.

Hāloa 'Āina Forest Restoration Agreement—Hāloa 'Āina is a Native Hawaiian family-owned business dedicated to restoring native dryland forest. In 2019, Kamehameha Schools entered into an agreement with Hāloa 'Āina aimed at developing a financial and ecological model to restore remnant 'iliahi or sandalwood and māmane (*Sophora chrysophylla*) forest on Kamehameha Schools lands in South Kona on the leeward side of Mauna Loa on the island of Hawai'i (Big Island Video News 2019, entire). Under a 5-year license, the project will improve the native ecosystems consisting of 'iliahi and māmane on formerly degraded agricultural lands. Revenues generated from the harvest of dead and senescent sandalwood trees are directly reinvested in the property with a focus on conservation management. Hāloa 'Āina markets products made from sandalwood material (oil, dust, etc.) and allocate a percentage of gross sales to Kamehameha Schools. Hāloa 'Āina is actively propagating 'iliahi, māmane, and koa trees in its greenhouses for outplanting on Kamehameha Schools lands in South Kona. These management actions conserve and enhance forest habitat 'i'iwi use for nesting and foraging, increase soil-water retention capacity, and improve ecosystem resilience to drying climate conditions.

The Nature Conservancy Forest Stewardship Management Plan for the Kona Hema Preserve—The Nature Conservancy Kona Hema Preserve was established in 1999 in the South Kona District of the island of Hawai'i and is comprised of 8,076 ac (3,268 ha) in four management units. The management program for Kona Hema Preserve is documented in The Nature Conservancy's Forest Stewardship Management Plan for the Kona Hema Preserve, which details management measures to protect, restore, and enhance rare plants and animals and their habitats within the preserve and in adjacent areas (The Nature Conservancy 2017, entire). Primary management goals for the Kona Hema Preserve are to: (1) prevent degradation of native forest and shrubland by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants; (3) conduct small mammal control and reduce the negative impacts of small mammals where possible; (4) monitor and track the biological and physical resources in the preserve, evaluate changes in these resources over time, and encourage biological and environmental research; (5) prevent extinction of rare species in the preserve; (6) build public understanding and support for the preservation of natural areas, and enlist volunteer assistance for preserve

management; and (7) protect the resources from fires in and around the preserve. Ungulate control reduces damage to ʻōhiʻa forests, maintains the health of tall stature trees used for ʻiʻiwi nesting, and prevents ungulates from creating breeding sites for introduced southern house mosquitoes that carry avian malaria. Fire suppression reduces the damage from wildfires and provides protection for forest and shrubland habitat that ʻiʻiwi use for nesting and foraging. Invasive plant control improves recruitment of native trees, and small mammal control, particularly rat (*Rattus* spp.) control, reduces the potential for predation on nesting ʻiʻiwi.

Paniolo Tonewoods, LLC, Forest Restoration Agreement with Kamehameha Schools—In 2019, Kamehameha Schools entered into an agreement with Paniolo Tonewoods, LLC, to manage 1,300 ac (526 ha) of Kamehameha Schools forest lands upslope of Hōnaunau Forest Reserve on the leeward slopes of Hualālai Volcano in North Kona on the island of Hawaiʻi (Big Island Video News 2019, entire). The pilot project, based on the exchange of goods for services known as ''stewardship contracting,'' is designed to demonstrate the concept of conservation offsetting costs of stewardship. Under the license terms, Paniolo Tonewoods' partner, Forest Solutions, Inc., is providing restoration services including koa tree propagation and koa out-planting in exchange for a fixed number of selected koa trees to be harvested under Kamehameha Schools-determined standards. The value of the harvested timber removed by Paniolo Tonewoods as part of the restoration/stewardship project will offset the costs of the conservation services and the final product of the processed koa wood is high-quality guitars. These management actions conserve and enhance forest and shrubland habitat ʻiʻiwi use for nesting and foraging, increase soil-water retention capacity, and improve ecosystem resilience to drying climate conditions.

After considering the factors described above, we have identified the following areas that we have reason to consider excluding because of non-permitted plans, agreements, or partnerships. Our consideration of an area for exclusion is based on all non-permitted plans, agreements, and/or partnerships for the area and the overall benefit these planning documents and associated conservation actions provide for the protection, maintenance, enhancement, and/or restoration of habitat ʻiʻiwi use for nesting and foraging. In all cases, we are considering excluding areas where private landowners are actively participating in the restoration or management of habitats essential to conservation of iiwi, allowing surveys or monitoring of iiwi and its habitat, or taking steps to protect and increase numbers of iiwi that occur on their properties.

Specific benefits of conservation management and rationale for considering exclusion are described below. We welcome any information regarding planning documents or other information we may have overlooked pertaining to the areas we are considering for exclusion and areas we are not considering for exclusion. We will work with landowners throughout the public comment period and during development of the final designation of critical habitat for ʻiʻiwi and seek comments on whether the existing management and conservation efforts of landowners meet our criteria for exclusion from the final designation under section 4(b)(2) of the Act.

Alakaʻi Plateau Unit—Alexander & Baldwin, Inc.—The Nature Conservancy manages two parcels of land (142 ac (58 ha) and 61 ac (25 ha)) owned by Alexander & Baldwin, Inc., included in the proposed critical habitat designation for ʻiʻiwi, Alakaʻi Plateau Unit. Conservation management activities on these lands include those associated with the Kauaʻi Watershed Alliance Management Plan Update, Overall Management Strategy (2012) and Kauaʻi Forest Bird Recovery Project.

The Nature Conservancy Wainiha Preserve was established by a conservation easement with Alexander & Baldwin, Inc., and is comprised of 7,050 ac (2,853 ha) in Wainiha Valley and is part of the Alakaʻi Plateau. The management program of the Wainiha Preserve under the above described management plans includes preventing degradation of watershed and forest ecosystems by reducing feral ungulate damage, controlling invasive plants, monitoring and tracking the biological and physical resources in the preserve, preventing extinction of rare species in the preserve, and building public understanding and support for the preservation of natural areas. In addition, The Nature Conservancy is a member of the Kauaʻi Watershed Alliance, whose goals include to conserve forest watershed and unique endemic plants and animals by construction of ungulate fences, ungulate removal, fence line surveys, and weed control. The Nature Conservancy also collaborates with the Kauaʻi Forest Bird Recovery Project, which conducts research to understand the ecology of native forest birds, the threats they face, and the application of management strategies for recovering their populations. The conservation actions occurring within Alakaʻi Plateau Unit under management by The Nature Conservancy, including Wainiha Preserve, the Kauaʻi Watershed Alliance, and the Kauaʻi Forest Bird Recovery Project, conserve and protect habitat important for ʻiʻiwi nesting and foraging. These conservation actions reduce breeding sites of introduced southern house mosquitoes that carry avian malaria, encourage native forest regeneration, and reduce small mammal predator populations through control activities. Based on The Nature Conservancy's management under the Kauaʻi Watershed Alliance Management Plan Update, Overall Management Strategy (2012), and collaboration with Kauaʻi Watershed Alliance and the Kauaʻi Forest Bird Recovery Project, we are considering excluding Alexander & Baldwin, Inc., lands from the final critical habitat designation for the ʻiʻiwi because forest habitat used by ʻiʻiwi within lands owned by Alexander & Baldwin, Inc. is protected from degradation by ungulate fencing and ungulate removal, and control of nonnative plants.

Kula Unit—Kaʻonoʻulu Ranch—The Kaʻonoʻulu Ranch manages 830 ac (336 ha) of land included in the proposed critical habitat designation for the ʻiʻiwi within the Kula Unit. Conservation management activities on these lands include those associated with the Kula Forest Reserve and the Papaʻanui Tract of Kahikinui Forest Reserve Management Plan and Leeward Haleakalā Watershed Restoration Partnership.

Kaʻonoʻulu Ranch is a member of the Leeward Haleakalā Watershed Restoration Partnership, a watershed partnership that manages lands on leeward east Maui to conserve endemic plants and animals and conducts watershed protection (including native forest reforestation and wildfire response planning and fire suppression) to improve forest and shrubland habitats that ʻiʻiwi use for nesting and foraging. Kaʻonoʻulu Ranch has been and continues to be an active partner with the State of Hawaii's Department of Land and Natural Resources to reduce the numbers of feral ungulates and promote native plant regeneration across Leeward Haleakalā. The conservation actions of Kaʻonoʻulu Ranch benefit habitat ʻiʻiwi use for nesting and foraging by promoting forest regeneration and reducing breeding sites for introduced southern house mosquitoes that carry avian malaria.

Based on Kaʻonoʻulu Ranch's management under the Kula Forest

Reserve and the Papa‘anui Tract of Kahikinui Forest Reserve Management Plan and participation in the Leeward Haleakalā Watershed Restoration Partnership, we are considering excluding Ka‘ono‘ulu Ranch lands from the final critical habitat designation for the ‘i‘iwi.

East Haleakalā Unit—Haleakalā Ranch—The Nature Conservancy manages 1,113 ac (451 ha) of land owned by Haleakalā Ranch included in the proposed critical habitat designation for ‘i‘iwi within the East Haleakalā Unit. Conservation management activities on these lands include those associated with: The Nature Conservancy's Waikamoi Preserve Long-Range Management Plan, Fiscal Years 2019–2024; the Leeward Haleakalā Watershed Restoration Partnership; and Maui Forest Bird Recovery Project.

Conservation actions being conducted in Waikamoi Preserve include control of feral ungulate populations; control of nonnative mammals, including rats (*Rattus* spp.), cats (*Felis catus*), mongoose (*Herpestes auropunctatus*), and dogs (*Canis familiaris*), that have been known to prey on ‘i‘iwi; control of habitat-modifying, nonnative plants in intact native communities and prevention of the introduction of additional nonnative plants; and natural resource monitoring and research to address the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. In addition, as fire is a threat in shrubland areas, management includes wildfire preparedness, including annually updating wildfire management plans and ensuring that staff is provided with fire suppression training, roads are maintained for fire break access, and equipment is supplied as needed to allow immediate response to fire threats. In addition, Haleakalā Ranch and The Nature Conservancy Waikamoi Preserve are members of the Leeward Haleakalā Watershed Restoration Partnership that conducts conservation management to conserve unique endemic plants and animals, monitor watershed resources, and control feral animals and invasive plants. The Nature Conservancy also collaborates with the Maui Forest Bird Recovery Project that conducts research to understand the ecology of native forest birds, the threats they face, and the application of management strategies for recovering their populations. The conservation actions of The Nature Conservancy Waikamoi Preserve benefit habitat ‘i‘iwi use for nesting and foraging by improving forest regeneration, reducing breeding sites of introduced southern house mosquitoes that carry avian malaria, controlling feral ungulates, conducting fire suppression activities that benefit forest and shrubland ‘i‘iwi habitat, controlling nonnative plants to improve recruitment of native trees, controlling small mammals to reduce predation on nesting ‘i‘iwi, and conducting research to understand threats to native forest birds and ways to address those threats.

Based on The Nature Conservancy's management of the Waikamoi Preserve under the Waikamoi Preserve Long-Range Management Plan, Fiscal Years 2019–2024; collaboration with the Maui Forest Bird Recovery Project and Haleakalā Ranch; and The Nature Conservancy's participation in the Leeward Haleakalā Watershed Restoration Partnership, we are considering excluding lands owed by Haleakalā Ranch from the final critical habitat designation for the ‘i‘iwi.

East Haleakalā Unit—East Maui Irrigation, Inc.—The Nature Conservancy manages 2,327 ac (942 ha) of land owned by East Maui Irrigation, Inc., in the proposed critical habitat designation for ‘i‘iwi within the East Haleakalā Unit. Conservation management activities on these lands include those associated with The Nature Conservancy's Waikamoi Preserve Long-Range Management Plan, Fiscal Years 2019–2024; the East Maui Watershed Partnership; and Maui Forest Bird Recovery Project.

Conservation actions being conducted in Waikamoi Preserve include bringing feral ungulate populations to zero within the preserve as rapidly as possible and preventing domestic livestock from entering the preserve; controlling or preventing entry of nonnative mammals, such as rats (*Rattus* spp.), cats (*Felis catus*), mongoose (*Herpestes auropunctatus*), and dogs (*Canis familiaris*), on the preserve as these mammals have negative impacts on reproduction and persistence of native plants and animals; controlling habitat-modifying, nonnative plants in intact native communities and preventing the introduction of additional nonnative plants; and conducting natural resource monitoring and research to address the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. In addition, as fire is a threat in shrubland areas, management includes wildfire preparedness, including annually updating wildfire management plans and ensuring that staff is provided with fire suppression training, roads are maintained for fire break access, and equipment is supplied as needed to allow immediate response to fire threats. In addition, Haleakalā Ranch and The Nature Conservancy Waikamoi Preserve are members of the Leeward Haleakalā Watershed Restoration Partnership that conducts conservation management to conserve unique endemic plants and animals, watershed resource monitoring, and feral animal and invasive plant control. The Nature Conservancy also collaborates with the Maui Forest Bird Recovery Project that conducts research to understand the ecology of native forest birds, the threats they face, and the application of management strategies for recovering their populations. The conservation actions of The Nature Conservancy Waikamoi Preserve benefit habitat ‘i‘iwi use for nesting and foraging by improving forest regeneration, reducing breeding sites of introduced southern house mosquitoes that carry avian malaria, controlling feral ungulates, conducting fire suppression activities to benefit forest and shrubland ‘i‘iwi habitat, conducting weed control to improve recruitment of native trees, conducting small mammal control to reduce predation on nesting ‘i‘iwi, and conducting research to understand threats to native forest birds and ways to address those threats.

Based on The Nature Conservancy's management of the Waikamoi Preserve under the Waikamoi Preserve, Long-Range Management Plan, Fiscal Years 2019–2024; collaboration with the Maui Forest Bird Recovery Project; and participation with East Maui Irrigation, Inc., in the East Maui Watershed Partnership, we are considering excluding lands owned by East Maui Irrigation, Inc. from the final critical habitat designation for the ‘i‘iwi.

Windward Hawai‘i Unit—Department of Hawaiian Homelands—The Department of Hawaiian Homeland manages two parcels (1,631 ac (660 ha) and 2,404 ac (973 ha)) of land included in the proposed designation for ‘i‘iwi the Windward Hawai‘i Unit. Conservation management activities on these lands include those under Department of Hawaiian Homelands' ‘Āina Mauna Legacy Program, and Mauna Kea Watershed Alliance.

The Department of Hawaiian Homelands' ‘Āina Mauna Legacy Program is a conservation initiative to restore and protect approximately 56,000 ac (22,662 ha) of native forest on Mauna Kea that is ecologically, culturally, and economically self-sustaining for the Hawaiian Homelands Trust, its beneficiaries, and the community (Department of Hawaiian Homelands 2022, pp. 1–2).

Program actions and planning include native forest restoration and sustainable koa forestry, invasive plant control, and feral ungulate control. Department of Hawaiian Homelands is also a member of the Mauna Kea Watershed Alliance, which conducts conservation actions to protect and enhance watershed ecosystems, including fencing and ungulate removal; nonnative, invasive plants control; and native forest restoration. In addition, the Mauna Kea Watershed Alliance is partnering with the NRCS on forest recovery and abatement of threats to native forest (Natural Resources Conservation Service 2022, entire). The conservation actions of Department of Hawaiian Homelands provide benefits to habitat ʻiʻiwi use for nesting and foraging by promoting forest regeneration and reducing breeding sites of introduced southern house mosquitoes that carry avian malaria, controlling feral ungulates, conducting weed control to improve recruitment of native trees, and establishing new or improving existing koa forests that provide habitat for ʻiʻiwi nesting and foraging.

Based on Department of Hawaiian Homelands's management under Department of Hawaiian Homelands' ʻĀina Mauna Legacy Program, and participation in the Mauna Kea Watershed Alliance, we are considering excluding these areas from the final critical habitat designation for the ʻiʻiwi. These areas are held in trust for Hawaiian beneficiaries for the protection of native forest surrounding Mauna Kea.

Windward Hawaiʻi Unit—Kūkaʻiau Ranch—The Kūkaʻiau Ranch manages 87 ac (35 ha) of land included in the proposed designation for ʻiʻiwi within the Windward Hawaiʻi Unit. Conservation management activities on these lands include those associated with the Kūkaʻiau Ranch conservation easement with The Nature Conservancy and Hawaiʻi Island Land Trust, and the Mauna Kea Watershed Alliance.

The Kūkaʻiau Ranch conservation easement with The Nature Conservancy and Hawaiʻi Island Land Trust provides for conservation work including fencing, removal of pigs and goats, and restoration of native plant species. In addition, Kūkaʻiau Ranch is a member of the Mauna Kea Watershed Alliance, which conducts conservation activities to protect and enhance watershed ecosystems, including fencing and ungulate removal, nonnative plant control, and native forest restoration. In addition, Kūkaʻiau Ranch collaborates with county and other landowners in fire response planning to protect its and adjacent landowners' natural resources from fires. Since 2009, when the conservation easement with The Nature Conservancy and Hawaiʻi Island Land Trust was signed (College of Tropical Agriculture and Human Resources 2009, entire), Kūkaʻiau Ranch has built ungulate fencing, removed pigs and goats, and restored native plant species on its conservation lands. The conservation actions of Kūkaʻiau Ranch benefit habitat ʻiʻiwi use for nesting and foraging by promoting forest regeneration and reduction of breeding sites for introduced southern house mosquitoes that carry avian malaria, nonnative plant control that improves recruitment of native trees, and fire suppression that benefits forest and shrubland habitat ʻiʻiwi use for nesting and foraging by minimizing damage to these habitats from wildfire.

Based on Kūkaʻiau Ranch's management under the Kūkaʻiau Ranch conservation easement with The Nature Conservancy and Hawaiʻi Island Land Trust, participation in the Mauna Kea Watershed Alliance, and collaboration with the State of Hawaii's Department of Forestry and Wildlife and adjacent landowners in wildfire response, we are considering excluding this area from the final critical habitat designation for the ʻiʻiwi.

Windward Hawaiʻi Unit—Parker Ranch Waipunalei, LLC—Parker Ranch manages 1,449 ac (586 ha) of land included in the proposed designation for ʻiʻiwi within the Windward Hawaiʻi Unit. Conservation management activities on these lands include those associated with Parker Ranch's sustainable koa forestry initiative and the Mauna Kea Watershed Alliance.

Parker Ranch manages over 100,000 ac (40,469 ha) of land in the Hāmākua, North Kohala, and South Kohala Districts on Mauna Kea and the Kohala Mountains on the island of Hawaiʻi, and in 2021, the ranch announced it is seeking to collaborate with public and private partners to develop sustainable forestry programs on some of these lands (Parker Ranch 2021, entire). For its Waipunalei lands, Parker Ranch is developing a sustainable koa forestry program to rehabilitate forest areas damaged by cattle grazing (Parker Ranch 2022, entire). Parker Ranch is a member of the Mauna Kea Watershed Alliance, whose shared vision is to protect and enhance watershed ecosystems, biodiversity, and natural resources through responsible management while promoting economic sustainability and providing recreational, subsistence, educational, and research opportunities. The conservation measures of Parker Ranch through its sustainable koa forestry initiative provide benefits to habitat ʻiʻiwi use for nesting and foraging by promoting koa forest regeneration, increasing soil-water retention capacity and improving ecosystem resilience to drying climate conditions, and controlling nonnative plants to improve recruitment of native trees.

Based on Parker Ranch's management under Parker Ranch's sustainable koa forestry initiative and participation in the Mauna Kea Watershed Alliance, we are considering excluding this area from the final critical habitat designation for the ʻiʻiwi.

Kaʻū Unit—The Nature Conservancy Kaʻū Preserve—The Nature Conservancy owns two parcels (274 ac (111 ha) and 125 ac (51 ha)) of land included in the proposed designation for ʻiʻiwi within the Kaʻū Unit. Conservation management activities on these lands include those associated with the Kaʻū Preserve Hawaiʻi Island, Long-Range Management Plan, Fiscal Years 2013–2018; and the Three Mountain Alliance Watershed Management Plan, December 31, 2007.

Conservation actions being conducted in the Kaʻū Preserve include preventing degradation of native forest by reducing feral ungulate damage, improving or maintaining the integrity of native ecosystems by reducing the effects of nonnative plants, conducting small mammal (including rodent) control and reducing the negative impacts of small mammals where possible, monitoring and tracking the biological and physical resources in the preserve and evaluating changes in these resources over time, encouraging biological and environmental research, preventing extinction of rare species in the preserve, building public understanding and support for the preservation of natural areas, and enlisting volunteer assistance for preserve management. The Nature Conservancy is also a member of the Three Mountain Alliance, whose conservation actions include conserving unique endemic plants and animals; conducting watershed resource monitoring; controlling feral ungulates and invasive, nonnative plants; reestablishing native plant species; and conducting activities to reduce the threat of wildfire. Since its founding, The Nature Conservancy Kaʻū Preserve has built ungulate fencing around the Kaiholena Unit, which reduced the number of pigs to zero in that unit, and is conducting nonnative plant control. The conservation actions of The Nature Conservancy Kaʻū Preserve provide benefits to habitat ʻiʻiwi use for nesting and foraging by improving forest regeneration and reducing breeding sites of introduced

southern house mosquitoes that carry avian malaria, controlling feral ungulates, conducting nonnative plant control to improve recruitment of native trees, and controlling small mammals to reduce predation on nesting ʻiʻiwi. Wildfire management and response activities minimize damage to forest and shrubland habitats ʻiʻiwi use for nesting and foraging.

Based on The Nature Conservancy's management of Kaʻū Preserve under the Kaʻū Preserve Hawaiʻi Island, Long-Range Management Plan, Fiscal Years 2013–2018, and participation in the Three Mountain Alliance Management Plan, December 31, 2007, we are considering excluding The Nature Conservancy's Kaʻū Preserve lands from the final critical habitat designation for the ʻiʻiwi.

South Kona Unit—Kealakekua Mountain Reserve, LLC—The Kealakekua Mountain Reserve, LLC, manages two parcels (94 ac (38 ha) and 5,707 ac (2,310 ha)) of land included in the proposed designation for ʻiʻiwi within the South Kona Unit. Conservation management activities on these lands include those associated with the Kealakekua Mountain Reserve Forest Legacy Program conservation easement with the State of Hawaii's Department of Land and Natural Resources (Kealakekua Mountain Reserve Forest Legacy Program conservation easement).

Once a former ranch, Kealakekua Mountain Reserve completed the Kealakekua Mountain Reserve Forest Legacy Program conservation easement with the State of Hawaii in 2011, to protect mesic and dryland native forest on Kealakekua Mountain Reserve lands. The Kealakekua Mountain Reserve management plan under the conservation easement outlines harvesting limitations that must be followed to insure regeneration of mesic and dryland native forest (dōTerra 2018, entire). In order to protect the immediate growth and regeneration of ʻiliahi or sandalwood trees, the management plan specifies only dead or severely damaged trees will be collected and that no living sandalwood trees should be harvested, which will allow existing healthy trees to grow to full maturity before they are harvested under sustainable tree management practices. The Kealakekua Mountain Reserve operates a large nursery, and various native Hawaiian trees and shrub species from the nursery are being out-planted at the Kealakekua Mountain Reserve. In addition, Kealakekua Mountain Reserve has availed itself of funding and technical assistance from the NRCS for projects on Kealakekua Mountain Reserve lands to conserve ground and surface water, increase soil health, and reduce soil erosion and sedimentation. The conservation actions of Kealakekua Mountain Reserve benefit habitat ʻiʻiwi use for nesting and foraging by improved forest regeneration, water and soil conservation, increased soil-water retention capacity, and improved ecosystem resilience to drying climate conditions.

Based on Kealakekua Mountain Reserve's management of its lands under the Kealakekua Mountain Reserve Forest Legacy Program conservation easement and NRCS projects, we are considering excluding Kealakekua Mountain Reserve from the final critical habitat designation for the ʻiʻiwi.

South Kona Unit—Kamehameha Schools—The Kamehameha Schools owns three parcels (2,744 ac (1,111 ha); 11,080 ac (4,484 ha); and 2,385 ac (965 ha)) of land included in the proposed designation for ʻiʻiwi within the South Kona Unit. Conservation management activities on these lands include those associated with the Kamehameha Schools ʻĀina Pauahi Natural Resources Management Program, Hāloa ʻĀina Forest Restoration Agreement, and the Three Mountain Alliance Watershed Management Plan, December 31, 2007.

Between 2000 and 2015, Kamehameha Schools increased its active stewardship of native ecosystems under its ʻĀina Pauahi Natural Resources Management Program from 3,000 ac (1,124 ha) to 136,000 ac (55,037 ha), 35 times the number of acres under Kamehameha Schools' care in 2000, including lands within the South Kona Unit in this proposed critical habitat designation. In 2019, Kamehameha Schools entered into an agreement with Hāloa ʻĀina, a Native Hawaiian family-owned business dedicated to restoring native mesic and dryland forest (Big Island Video News 2019, entire). Under a 5-year license, the project will improve the native ecosystems consisting of remnant ʻiliahi and māmane forest on formerly degraded Kamehameha Schools agricultural lands in South Kona. Revenues generated from the harvest of dead and senescent sandalwood trees are directly reinvested in the subject property with the focus of conservation management. Hāloa ʻĀina is actively propagating ʻiliahi, māmane, and koa trees in its greenhouses for planting on Kamehameha Schools lands. Kamehameha Schools is also a member of the Three Mountain Alliance, whose conservation actions include conserving unique endemic plants and animals; conducting watershed resource monitoring; controlling feral ungulates and invasive, nonnative plants; reestablishing native plant species; and conducting activities to reduce the threat of wildfire. The conservation actions of Kamehameha Schools benefit habitat ʻiʻiwi use for nesting and foraging by promoting forest regeneration and reduction of breeding sites for introduced southern house mosquitoes that carry avian malaria through control of feral ungulates; nonnative plant control that improves recruitment of native trees; fire suppression that benefits forest and shrubland ʻiʻiwi use for nesting and foraging by minimizing damage to these habitats by wildfire; and ʻiliahi and māmane forest restoration that conserves and enhances forest and shrubland habitat ʻiʻiwi use for nesting and foraging, increases soil-water retention capacity, and improves ecosystem resilience to drying climate conditions.

Based on Kamehameha Schools' management of its lands under Kamehameha Schools' ʻĀina Pauahi Natural Resources Management Program, Hāloa ʻĀina Forest Restoration Agreement, and the Three Mountain Alliance Management Plan, we are considering excluding Kamehameha Schools lands from the final critical habitat designation for the ʻiʻiwi.

South Kona Unit—Kealia Ranch—The Kealia Ranch manages 1,758 ac (712 ha) of land included in the proposed designation for ʻiʻiwi within the South Kona Unit. Conservation management activities on Kealia Ranch lands include those associated with NRCS' Environmental Quality Incentive Program land stewardship projects, as well as cooperation with government partners for wildlife conservation on Kealia Ranch and adjacent lands.

Kealia Ranch is a 12,000-ac (4,856-ha) working cattle ranch founded in 1915, located in the South Kona District on leeward Mauna Loa Volcano on the island of Hawaiʻi. Kealia Ranch has availed itself of funding and technical assistance from the NRCS for projects on Kealia Ranch to conserve ground and surface water, increase soil health, and reduce soil erosion and sedimentation (Natural Resources Conservation Service 2022, entire). The Kealia Ranch is an immediate neighbor to the Hakalau National Wildlife Refuge, Kona Forest Unit, and cooperates with the refuge in areas such as weed control, wildfire suppression, emergency situations, and security (Kealia Ranch 2022, entire). From 1993–1998, Kealia Ranch participated in conservation efforts with the Service to save from extinction the last remaining population of ʻalalā or Hawaiian crow (*Corvus hawaiiensis*) in

the wild. Kealia Ranch has worked with the University of Hawai‘i College of Tropical Agriculture and Human Resources on research projects and trials on Kealia Ranch lands and cooperates annually with the U.S. Geological Survey (USGS) on research for volcanic activity and ground swell of Mauna Loa (Kealia Ranch 2022, entire). The conservation actions of Kealia Ranch benefit forest and shrubland habitat ‘i‘iwi use for nesting and foraging by promoting soil and water conservation, weed control, and wildfire suppression.

Based on Kealia Ranch's implementation of water and soil conservation projects through NRCS' Environmental Quality Incentives Program and cooperation with neighbors in areas including nonnative plant control and wildfire suppression, we are considering excluding Kealia Ranch lands from the final critical habitat designation for the ‘i‘iwi.

South Kona Unit—The Nature Conservancy, Kona Hema Preserve—The Nature Conservancy owns 5,700 ac (2,307 ha) of land included in the proposed designation for ‘i‘iwi within the South Kona Unit. Conservation management activities on these lands include those associated with the Forest Stewardship Management Plan for The Kona Hema Preserve and the Three Mountain Alliance Management Plan, December 31, 2007.

The Kona Hema Preserve is comprised of 8,076 ac (3,268 ha) in four management units. Management activities on the Kona Hema Preserve are to prevent degradation of native forest and shrubland by reducing feral ungulate damage; to improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants; to conduct small mammal control and reduce the negative impacts of small mammals where possible; to monitor and track the biological and physical resources in the preserve and evaluate changes in these resources over time, and encourage biological and environmental research; to prevent extinction of rare species in the preserve; to build public understanding and support for the preservation of natural areas; and to enlist volunteer assistance for preserve management and the protection of the resources from fires in and around the preserve. The Nature Conservancy is also a member of the Three Mountain Alliance, whose conservation actions include conserving unique endemic plants and animals; conducting watershed resource monitoring; controlling feral ungulates and invasive, nonnative plants; reestablishing native plant species; and conducting activities to reduce the threat of wildfire. The conservation actions of The Nature Conservancy Kona Hema Preserve benefit habitat ‘i‘iwi use for nesting and foraging by improved forest regeneration and reduction of breeding sites for introduced southern house mosquitoes that carry avian malaria, by control of feral ungulates, by nonnative plant control that improves recruitment of native trees, and by small mammal control to reduce predation on nesting ‘i‘iwi. Wildfire management and response benefit forest and shrubland habitat ‘i‘iwi use for nesting and foraging by minimizing damage to these habitats by wildfire.

Based on The Nature Conservancy's management of the Kona Hema Preserve under the Forest Stewardship Management Plan for The Kona Hema Preserve and the Three Mountain Alliance Management Plan, December 31, 2007, we are considering excluding The Nature Conservancy's Kona Hema Preserve lands from the final critical habitat designation for the ‘i‘iwi.

North Kona Unit—Kamehameha Schools—The Kamehameha Schools owns two parcels (2,585 (1,046 ha) and 1,557 (630 ha)) of land included in the proposed designation for ‘i‘iwi within the North Kona Unit. Conservation management activities on these lands include those associated with the Kamehameha Schools' ‘Āina Pauahi Natural Resources Management Program; the Paniolo Tonewoods, LLC, Forest Restoration Agreement with Kamehameha Schools; and the Three Mountain Alliance Management Plan, December 31, 2007.

Kamehameha Schools' ‘Āina Pauahi Natural Resources Management Program implements Kamehameha Schools' conservation land stewardship policy through the protection and conservation of natural resources, water resources, and ancestral places (Kamehameha Schools 2022, entire). Between 2000 and 2015, Kamehameha Schools increased its active stewardship of native ecosystems under the program from 3,000 ac (1,124 ha) to 136,000 ac (55,037 ha), which is 45 times the number of acres under Kamehameha Schools' care in 2000, and includes lands within the North Kona Unit in this proposed critical habitat designation. Kamehameha Schools entered into an agreement in 2019, with Paniolo Tonewoods, LLC, to manage 1,300 ac (526 ha) of Kamehameha Schools lands upslope of Hōnaunau Forest Reserve that are mixed ‘ōhi‘a/koa forest (Big Island Video News 2019, entire). Kamehameha Schools is also a member of the Three Mountain Alliance, whose conservation actions include conserving unique endemic plants and animals; conducting watershed resource monitoring; controlling feral ungulates and invasive, nonnative plants; reestablishing native plant species; and conducting activities to reduce the threat of wildfire. The conservation actions of Kamehameha Schools benefit habitat ‘i‘iwi use for nesting and foraging by promoting forest regeneration and reduction of mosquito breeding sites; weed control that improves recruitment of native trees; fire suppression that benefits forest and shrubland habitats by minimizing damage to these habitats by wildfire; and koa silviculture that conserves and enhances forest and shrubland habitat ‘i‘iwi use for nesting and foraging, increases soil-water retention capacity, and improves ecosystem resilience to drying climate conditions.

Based on Kamehameha Schools' management of its lands under Kamehameha Schools' ‘Āina Pauahi Natural Resources Management Program; Paniolo Tonewoods, LLC, Forest Restoration Agreement with Kamehameha Schools; and the Three Mountain Alliance Management Plan, December 31, 2007, we are considering excluding Kamehameha Schools lands from the final critical habitat designation for the ‘i‘iwi.

Summary of Exclusions Considered Under 4(b)(2) of the Act

We have reason to consider excluding the following areas under section 4(b)(2) of the Act from the final critical habitat designation for the ‘i‘iwi. Table 2 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat but for which we are considering possible exclusion under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 2—AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT

Unit	Owner	Areas considered for exclusion, in acres (Hectares)	Associated plans and agreements
Alaka‘i Plateau	Alexander & Baldwin, Inc	203 (82)	Kaua‘i Watershed Alliance Management Plan Update, Overall Management Strategy; Kaua‘i Forest Bird Recovery Project.
Kula	Ka‘ono‘ulu Ranch	830 (336)	Kula Forest Reserve and the Papa‘anui Tract of Kahikinui Forest Reserve Management Plan; Leeward Haleakalā Watershed Restoration Partnership.
East Haleakalā	Haleakalā Ranch	1,113 (451)	The Nature Conservancy’s Waikamoi Preserve, Long-Range Management Plan, Fiscal Years 2019–2024; Leeward Haleakalā Watershed Restoration Partnership; Maui Forest Bird Recovery Project.
East Haleakalā	East Maui Irrigation, Inc	2,327 (942)	The Nature Conservancy’s Waikamoi Preserve, Long-Range Management Plan, Fiscal Years 2019–2024; East Maui Watershed Partnership; Maui Forest Bird Recovery Project.
Windward Hawai‘i	Kamehameha Schools	13,308 (5,386)	Kamehameha Schools ‘Āina Pauahi Natural Resources Management Program; Three Mountain Alliance Management Plan, December 31, 2007; Kamehameha Schools Keauhou and Kīlauea Forest Lands Safe Harbor Agreement.
Windward Hawai‘i	Department of Hawaiian Homelands.	4,035 (1,633)	Department of Hawaiian Homelands’ ‘Āina Mauna Legacy Program; Mauna Kea Watershed Alliance.
Windward Hawai‘i	Kūka‘iau Ranch	87 (35)	Kūka‘iau Ranch Conservation Easement with The Nature Conservancy and Hawaiian Island Land Trust; Mauna Kea Watershed Alliance.
Windward Hawai‘i	Parker Ranch Waipunalei, LLC.	1,449 (586)	Parker Ranch Sustainable Forestry Initiative; Mauna Kea Watershed Alliance.
Ka‘ū	The Nature Conservancy	399 (162)	Ka‘ū Preserve Hawai‘i Island, Long-Range Management Plan, Fiscal Years 2013–2018; Three Mountain Alliance Management Plan, December 31, 2007.
South Kona	Kealakekua Mountain Reserve, LLC.	5,801 (2,348)	Kealakekua Mountain Reserve Forest Legacy Program Conservation Easement with the Hawaii’s Department of Land and Natural Resources.
South Kona	Kamehameha Schools	16,209 (6,560)	Kamehameha Schools ‘Āina Pauahi Natural Resources Management Program; Kamehameha Schools Hāloa ‘Āina Forest Restoration Agreement; Three Mountain Alliance Management Plan, December 31, 2007.
South Kona	Kealia Ranch	1,758 (712)	NRCS Environmental Quality Incentive Program Projects.
South Kona	The Nature Conservancy	5,700 (2,307)	Forest Stewardship Management Plan for The Kona Hema Preserve; Three Mountain Alliance Management Plan, December 31, 2007.
North Kona Unit	Kamehameha Schools	4,142 (1,676)	Kamehameha Schools ‘Āina Pauahi Natural Resources Management Program; Paniolo Tonewoods, LLC, Forest Restoration Agreement with Kamehameha Schools; Three Mountain Alliance Management Plan, December 31, 2007.
Total Area Considered for Exclusion.		57,361 (22,316)	

In conclusion, for this proposed designation, we have reason to consider excluding the areas identified above based on other relevant impacts. We specifically solicit comments on the inclusion or exclusion of such areas. However, if through the public comment period we receive information that we determine indicates that there are potential economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may 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 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Required Determinations

Clarity of the Rule

We are required by Executive Orders (E.O.s) 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 (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate 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 designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation 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 designation 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. In our draft economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use. The proposed critical habitat units are in remote wilderness areas that are not used for energy generation. 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 are not likely to 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 proposed rule would significantly or uniquely affect small governments. Small governments would be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for ʻiʻiwi 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 ʻiʻiwi, and it concludes that, if adopted as proposed, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this 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 this proposed critical habitat designation 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 Federal Government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary 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 E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that this proposed 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 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.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations. In a line of cases starting with *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

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), E.O. 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 designation for the ʻiʻiwi, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this proposed rule is available on the internet at *https://www.regulations.gov* and upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Pacific Islands Fish and Wildlife 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. In § 17.11, in paragraph (h), amend the table ''List of Endangered and Threatened Wildlife'' by revising the entry for ''Iiwi (honeycreeper)'' under Birds to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
BIRDS				
*	*	*	*	*
Iiwi (honeycreeper)	*Drepanis coccinea*	Wherever found	T	82 FR 43873, 9/20/2017; 50 CFR 17.95(b).[CH]
*	*	*	*	*

■ 3. In § 17.95, amend paragraph (b) by adding an entry for ''Iiwi (honeycreeper) (*Drepanis coccinea*)'' following the entry for ''Crested Honeycreeper (Akohekohe) (*Palmeria dolei*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Iiwi (honeycreeper) (*Drepanis coccinea*)

(1) Critical habitat units are depicted for Kauai, Maui, and Hawaii Counties, Hawaii, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of iiwi consist of the following components:

(i) Multiple patches of seasonally flowering trees, including ohia (*Metrosideros polymorpha*) and mamane (*Sophora chrysophylla*), and/or shrubs that collectively provide the iiwi a year-round nectar source. The number of patches of flowering trees and shrubs needed may be few if patch size is large. For example, a few large contiguous areas of forest containing seasonally asynchronously flowering trees and shrubs that are several square miles (several kilometers) in size, or many small patches with concentrated, seasonally asynchronously flowering trees and shrubs would meet the iiwi's year-round nectar source needs. Patches can be close together, such as individual flowering trees a few hundred feet (hundred meters) apart in an open landscape, or far apart, such as large forest patches of seasonally asynchronous flowering trees or shrubs as much as several miles (several kilometers) apart.

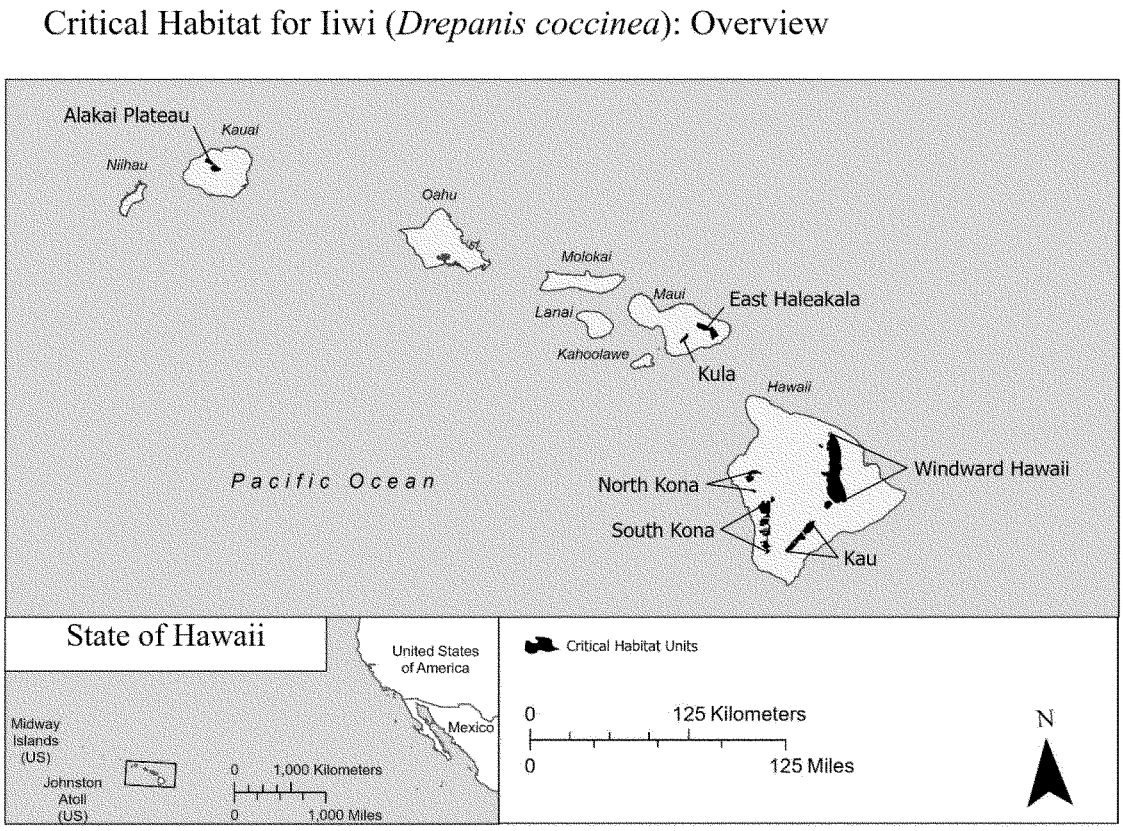
(ii) Tall stature trees (height taller than 26 feet (8 meters)) characteristic of a mesic and wet forest ecosystem, including ohia and koa (*Acacia koa*) trees for nesting.

(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 final rule.

(4) Data layers defining map units were created using summaries of abundance, distribution, and trends compiled by the U.S. Geological Survey. Where this summary was incomplete, specifically within the Kula region of Maui, we used information provided by the National Park Service and the Maui Forest Bird Recovery Project. 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 *https://www.regulations.gov* at Docket No. FWS–R1–ES–2022–0144, 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) Index map follows:

Figure 1 to Iiwi (honeycreeper)
(*Drepanis coccinea*) paragraph (5)

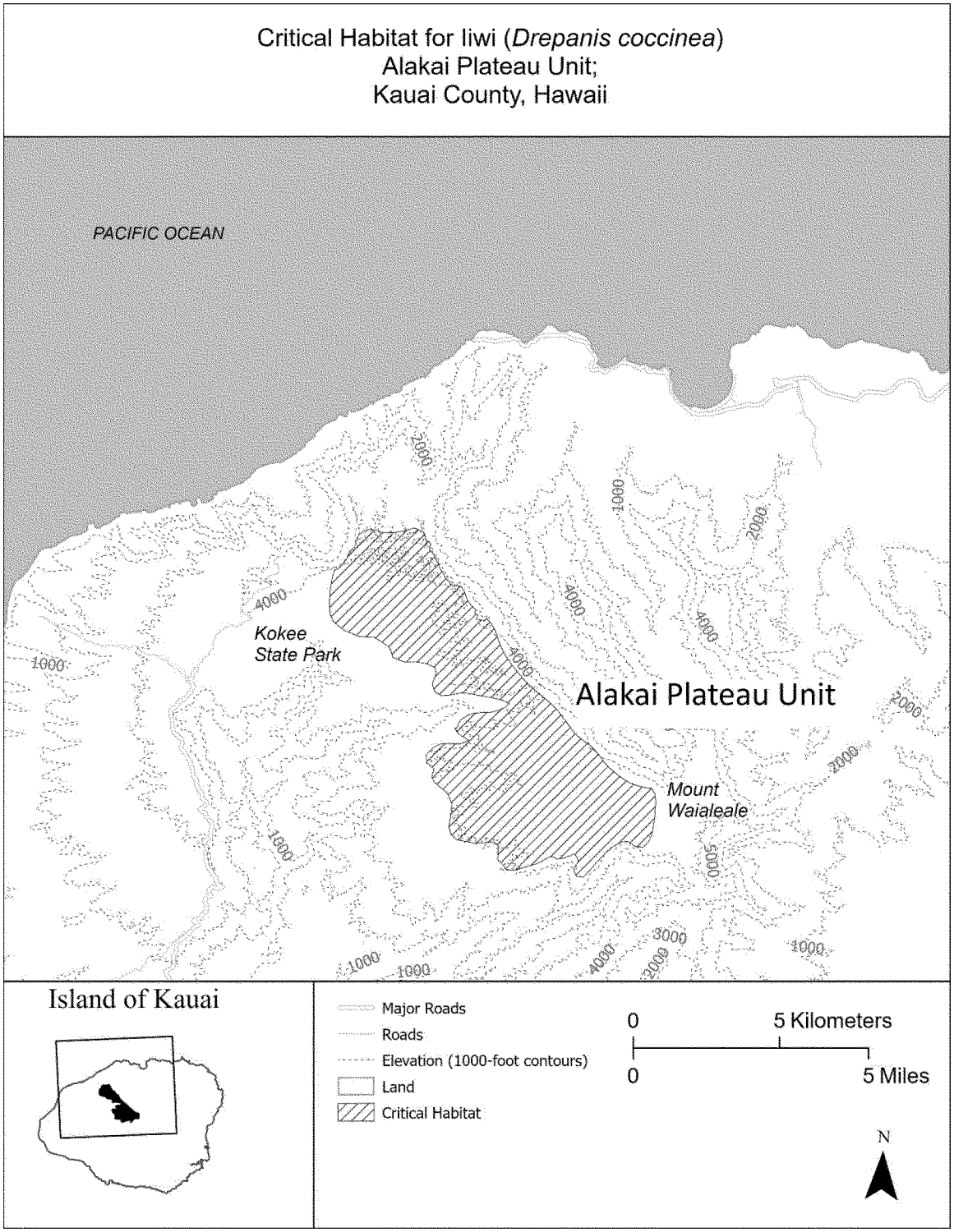


(6) Alakai Plateau Unit: Kauai County, Hawaii.

(i) The Alakai Plateau Unit comprises 12,510 acres (ac) (5,063 hectares (ha)) of occupied habitat in Kauai County. This unit consists of State and privately owned lands.

(ii) Map of Alakai Plateau Unit follows:

Figure 2 to Iiwi (honeycreeper) (*Drepanis coccinea*) paragraph (6)(ii)

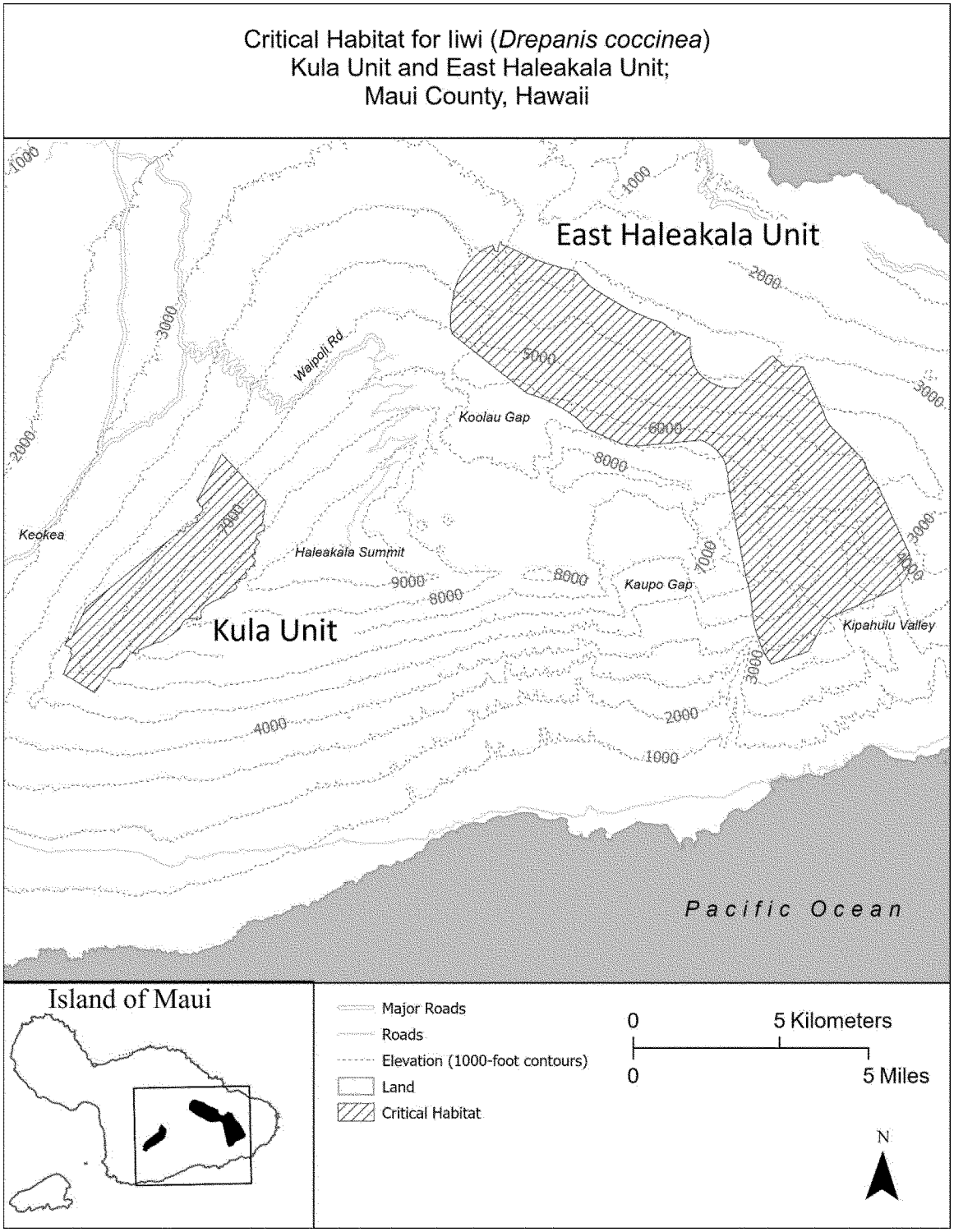


(7) Kula Unit: Maui County, Hawaii.

(i) The Kula Unit comprises 5,226 ac (2,115 ha) of occupied habitat in Maui County on the west slope of Haleakala Volcano. This unit consists of State and privately owned lands.

(ii) Map of Kula and East Haleakala Units follows:

Figure 3 to Iiwi (honeycreeper)
(*Drepanis coccinea*) paragraph (7)(ii)



(8) East Haleakala Unit: Maui County, Hawaii.

(i) The East Haleakala Unit comprises 19,393 ac (7,848 ha) of occupied habitat in Maui County on the northeast slope of Haleakala Volcano. This unit consists of lands owned by the National Park Service, the State of Hawaii, and private landowners.

(ii) Map of East Haleakala Unit is provided at paragraph (7)(ii) of this entry.

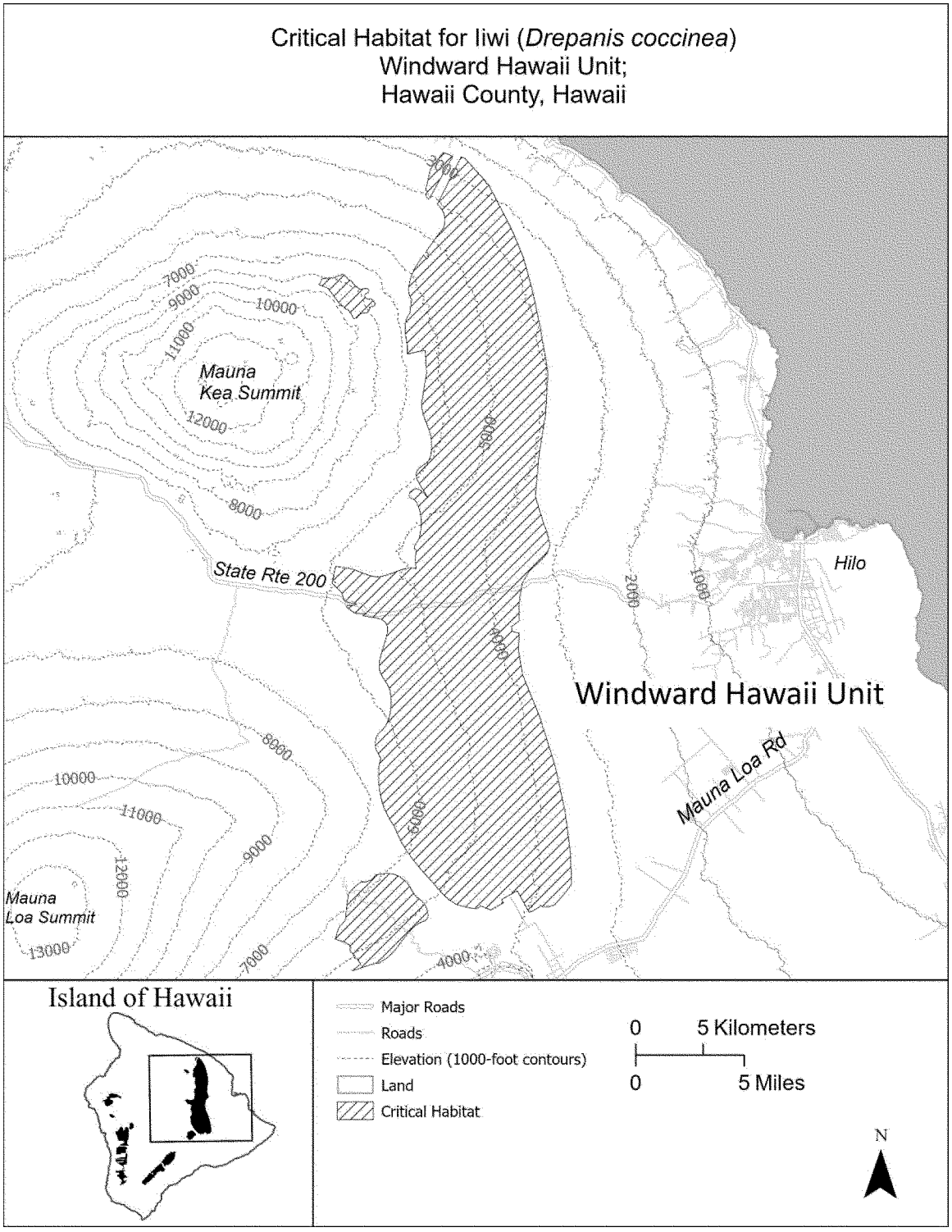
(9) Windward Hawaii: Hawaii County, Hawaii.

(i) The Windward Hawaii Unit comprises 141,085 ac (57,095 ha) of occupied habitat in Hawaii County on the east slopes of Mauna Kea and

Mauna Loa Volcanoes. The unit is comprised of one large area and three small disjunct areas that are near the northwest and south end of the larger area. This unit consists of lands owned by the National Park Service, the U.S. Fish and Wildlife Service, the State of Hawaii, and private landowners.

(ii) Map of Windward Hawaii Unit follows:

Figure 4 to Iiwi (honeycreeper) (*Drepanis coccinea*) paragraph (9)(ii)

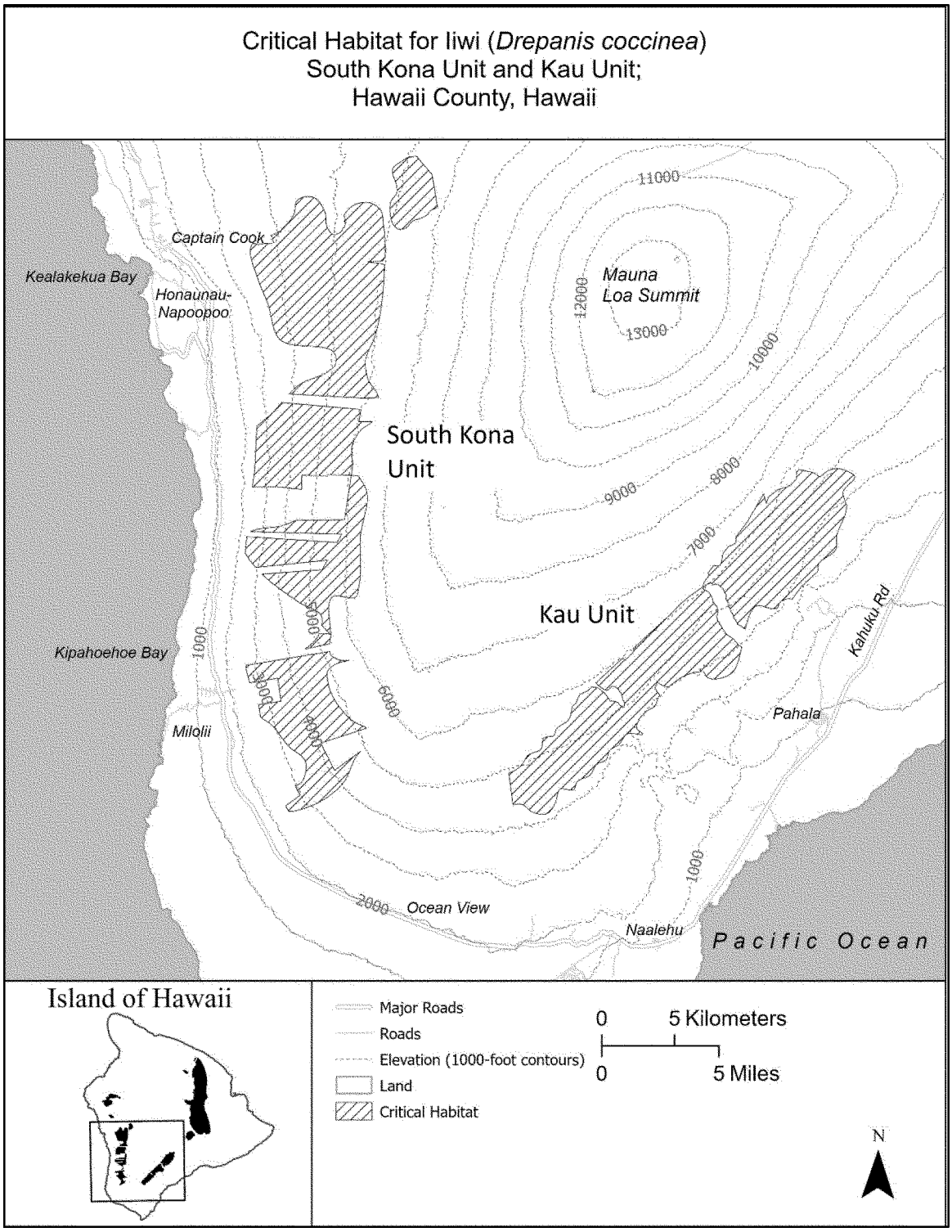


(10) Kau Unit: Hawaii County, Hawaii.

(i) The Kau Unit comprises 32,458 ac (13,136 ha) of occupied habitat in Hawaii County on the southeast slope of Mauna Loa Volcano. The unit consists of State and privately owned lands.

(ii) Map of Kau and South Kona Units follows:

Figure 5 to Iiwi (honeycreeper)
(*Drepanis coccinea*) paragraph (10)(ii)



(11) South Kona Unit: Hawaii County, Hawaii.

(i) The South Kona Unit comprises 51,376 ac (20,791 ha) of occupied habitat in Hawaii County on the west slope of Mauna Loa Volcano. The unit is comprised of four roughly similar sized areas separated from each by distances of less than 1 mi (1.6 km). This unit consists of lands owned by the U.S. Fish and Wildlife Service, the State of Hawaii, and private landowners.

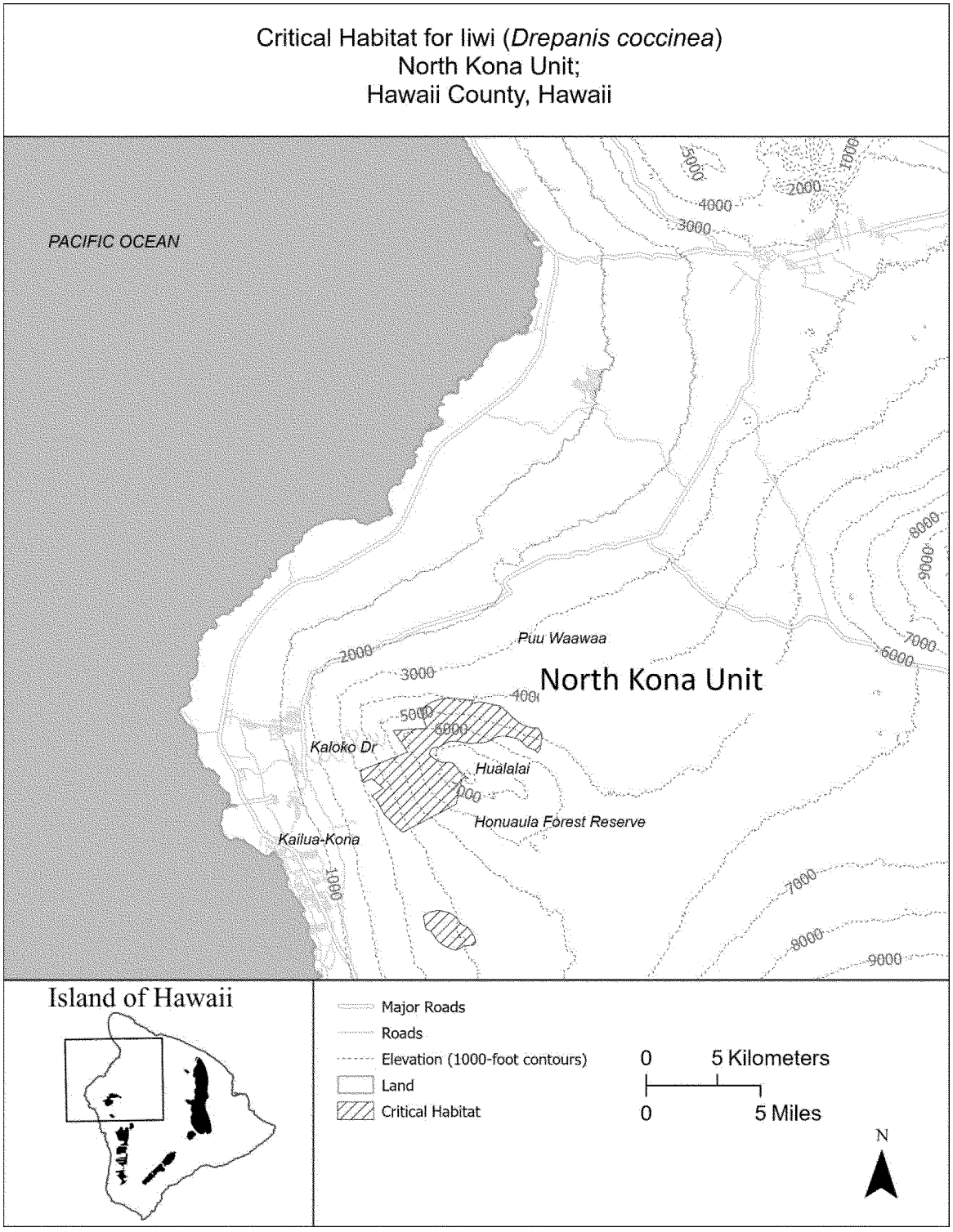
(ii) Map of South Kona Unit is provided at paragraph (10)(ii) of this entry.

(12) North Kona Unit: Hawaii County, Hawaii.

(i) The North Kona Unit comprises 13,599 ac (5,503 ha) of occupied habitat in Hawaii County on the north, west, and south slopes of Hualalai Volcano. This unit is comprised of one large area to the north and one smaller disjunct area to the south. This unit consists of State and privately owned lands.

(ii) Map of North Kona Unit follows:

Figure 6 to Iiwi (honeycreeper) (*Drepanis coccinea*) paragraph (12)(ii)



Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–27544 Filed 12–27–22; 8:45 am]

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Vol. 87, No. 248

Wednesday, December 28, 2022

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

73621–73910 1
73911–74288 2
74289–74484 5
74485–74948 6
74949–75172 7
75173–75454 8
75455–75890 9
75891–76104 12
76105–76402 13
76403–76550 14
76551–76918 15
76919–77457 16
77459–77704 19
77705–77970 20
77971–78512 21
78513–78818 22
78819–79212 23
79213–79786 27
79787–79976 28

CFR PARTS AFFECTED DURING DECEMBER

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:
10501 74489
10502 74491
10503 74949
10504 75455
10505 76403
10506 77463
10507 77465
10508 78511

Executive Orders:
14089 77459

Administrative Orders:
Memorandums:
Memorandum of November 23, 2022 73621
Memorandum of November 28, 2022 74485
Memorandum of November 30, 2022 74479
Memorandum of December 9, 2022 77705
Memorandum of December 15, 2022 77967
Memorandum of December 21, 2022 79787
Notices:
Notice of December 12, 2022 76547
Notice of December 12, 2022 76549

5 CFR

316 73623
531 ..... 74289, 76105

Proposed Rules:
2429 78014

6 CFR

29 77971

7 CFR

180 74951
225 79213
457 76919
1710 74403
1720 74403
1785 74403
3560 ..... 74502, 75457

8 CFR

208 79789
214 ..... 75891, 76816, 77979
274a 76816, 77979
1208 79789

9 CFR

317 77707
381 77707

10 CFR

50 73632
72 79217
429 ..... 75144, 77298, 78513
430 78819
431 ..... 75144, 77298, 78513, 78821

Proposed Rules:
50 79258
429 74023
431 ..... 74023, 74850, 75388
433 78382
435 78382

11 CFR

100 77467
104 77979
110 77467

Proposed Rules:
1 75518
4 75518
5 75518
6 75518
100 75518
102 75518
103 ..... 75518, 78611
104 ..... 75518, 77979, 78611
105 75518
106 75518
108 75518
109 75518
110 75518
111 75518
112 75518
113 75945
114 75518
116 75518
200 75518
201 75518
300 75518
9003 75518
9004 75518
9007 ..... 75518, 78611
9014 78611
9032 75518
9033 75518
9034 75518
9035 75518
9036 75518
9038 ..... 75518, 78611
9039 75518

12 CFR

204 73633
209 73634
228 78829
345 78829
1003 77980
1026 ..... 76551, 78831
1253 79217
1282 78837

Proposed Rules:
Ch. II 77529
Ch. III 77529
328 78017

13 CFR

Proposed Rules:
125 77529
126 76585
130 76127
134 76585

14 CFR

21 75704
23 75704
25 ..... 74503, 75704
29 75704
33 75704
36 75704
39 ..... 73911, 73914, 73916, 73919, 73921, 74291, 74294, 74296, 74298, 75459, 75462, 75911, 75915, 75918, 76405, 76407, 76410, 76413, 76416, 76553, 76919, 76922, 77480, 77482, 77485, 77487, 77491, 77493, 77497, 77500, 77502, 78513, 78515, 78518, 78521, 78524, 78527, 78530, 78532, 78535, 78538, 78846, 79232, 79235, 79236, 79794, 79798
47 75704
49 75704
60 75704
61 75704
67 75704
71 ..... 73925, 73926, 73927, 73928, 73929, 73930, 73931, 73933, 73934, 73935, 73936, 74301, 74302, 74505, 74507, 74508, 74509, 74510, 74511, 74513, 74514, 74516, 74517, 74956, 74959, 74962, 74965, 75464, 75465, 75920, 75923, 75924, 75925, 76105, 76557, 76924, 77709, 77710, 78849
73 75704
77 78849
91 ..... 75704, 79239
93 79245
95 74303
97 ..... 75466, 75468, 75704, 78852, 78854, 79247, 79249
101 75704
107 75704
121 75704
125 75704
129 75704
135 75704
141 75704
183 75704
440 75704

Proposed Rules:
21 ..... 74994, 77749
25 75424
39 ..... 73683, 73686, 74330, 74519, 74522, 74524, 74527, 74530, 74535, 74538, 75179, 75181, 75519, 75522, 75525, 75528, 76148, 76151, 76155, 76158, 76160, 76162, 76166, 76589, 77037, 77040, 77532, 77535, 77763, 78612, 78878, 78881, 79259, 79819, 79821
61 75955
63 75955
65 75955
71 ..... 74048, 74049, 74050, 74052, 74053, 74055, 74332, 75531, 75533, 75973, 75974, 76169, 76429, 76592, 76593, 76594, 77043, 77044, 77540, 77541, 78614, 78616, 78883, 78885
91 74995
110 74995
119 74995
121 74995
125 74995
136 74995
399 77765
1421 78037

15 CFR

734 74966
736 74966
740 74966
742 74966
744 ..... 74966, 75173, 76924, 77505, 78856
762 74966
772 74966
774 74966

16 CFR

1307 74311

Proposed Rules:
1 74056
260 77766

17 CFR

200 ..... 77982, 78770
232 78770
240 78770
249 78770
270 78770
274 78770

Proposed Rules:
1 76374
39 76698
140 76698
Ch. II 74057
229 75975
232 75975
240 75975
249 75975
270 77172
274 ..... 75975, 77172

18 CFR

101 76928
201 76928

Proposed Rules:
40 74541

20 CFR

655 ..... 76816, 77979

21 CFR

130 ..... 76559, 78857
131 ..... 76559, 78857
170 77983
510 76418
516 ..... 76418, 76425
520 76418
522 76418
528 76418
558 76418
570 77983
866 79251
870 ..... 79253, 79801
1308 ..... 75470, 78857

Proposed Rules:
312 ..... 75536, 75551
1308 78887

22 CFR

120 74967

Proposed Rules:
120 77046

24 CFR

Proposed Rules:
58 78324
1005 78324

25 CFR

585 76928

Proposed Rules:
2 73688
151 74334
293 74916

26 CFR

1 ..... 73937, 76569
301 ..... 75473, 76569

Proposed Rules:
1 ..... 75185, 76430

29 CFR

2550 73822
4044 ..... 74968, 76576

Proposed Rules:
103 73705

31 CFR

510 78470
525 78470
536 ..... 78470, 78484
539 ..... 78470, 78484
541 ..... 78470, 78484
542 78324
544 ..... 78470, 78484
546 ..... 78470, 78484
547 ..... 78470, 78484
548 ..... 78470, 78484
549 ..... 78470, 78484
551 ..... 78470, 78484
552 ..... 78470, 78484
553 78484
555 ..... 78470, 78484
558 ..... 78470, 78484
560 78470
561 78470
562 ..... 78470, 78484
569 ..... 78470, 78484
570 78484
576 ..... 78470, 78484
578 78484
579 ..... 78470, 78484
582 ..... 78470, 78484
583 ..... 78470, 78484
584 ..... 78470, 78484
585 ..... 78470, 78484
587 ..... 73635, 73636, 76930, 76931, 79255, 79803
588 78484
590 78484
591 78470
594 ..... 76932, 78470, 78484
596 78470
597 ..... 78470, 78484
598 ..... 73637, 73638, 73643. 73647, 78470, 78484
599 ..... 77711, 78484

Proposed Rules:
1010 77404

32 CFR

310 ..... 76933, 76935

33 CFR

117 79255
138 78860
165 ..... 73648, 73650, 73937, 73938, 74969, 75928, 76105, 76425, 76937, 78543, 78864, 78869, 79804

Proposed Rules:
105 74563
334 ..... 74346, 74348

34 CFR

Proposed Rules
Ch. II 79824

36 CFR

1220 75930
1222 75930

37 CFR

222 77518
224 77518
225 77518
233 77518
234 77518
235 77518
380 73940
385 76937
386 73941

38 CFR

3 78543
8 73652

Proposed Rules:
38 75196
51 78038

39 CFR

20 76942
111 76577

Proposed Rules:
111 76170
3050 77543

40 CFR

9 73941
49 75334
52 ..... 74314, 74316, 75932, 76107, 76944, 77720, 78544, 79806
61 74319
62 77522
63 ..... 77985, 78545
70 78871
80 73956
122 73965
123 73965
180 ..... 76944, 76946, 78558, 78562
271 74971
272 74971
300 78568
312 76578
372 74518
721 73941
725 73941

Proposed Rules:
52 ..... 73706, 74060, 74349, 74355, 74356, 74573, 74577, 76171, 77544, 77770, 77774, 78617, 78892, 78896, 78900, 78902, 79261, 79830

60 .....73708, 74702, 79176
63.....78621
70.....78908
81.....74577
84.....76738
122.....74066
123.....74066
131.....74361
170.....74072
271.....75020
372.....74379
721.....74072, 76597

41 CFR

301–30.....78874

42 CFR

412.....76109
413.....76109
482.....76109
485.....76109
495.....76109
600.....77722

Proposed Rules:

2.....74216
8.....77330
401.....79452
405.....79452
417.....79452
422.....76239, 79452
423.....79452
431.....76239
435.....76239
438.....76239
440.....76239
455.....79452
457.....76239
460.....79452

44 CFR

296.....75495

45 CFR

Proposed Rules:

153.....78206
155.....78206
156 .....74097, 76239, 78206
160.....78438
162.....78438
164.....74216
170.....79452

46 CFR

294.....74977

47 CFR

1 .....74987, 76949, 78573
2.....78573
8.....76959
47.....78573
64 .....75496, 75943, 76425
73.....76582, 77526

Proposed Rules:

4.....74102, 79263
8.....77048
64.....75199
73.....76434, 77782

48 CFR

Ch. 1.....73888, 73889
1.....73894, 73902
2.....73894
3.....73894
4.....73890, 73894
5.....73894
6.....73894
7.....73894
8.....73894
9.....73894
10.....73894
11.....73894
12.....73894
13.....73890, 73894
14.....73894
15.....73894
16.....73894
17.....73889, 73894
18.....73890, 73894
19.....73894
22.....73890
23.....73894
24.....73894
25 .....73890, 73894, 76427
26.....73894
27.....73890, 73894
28.....73894
29.....73894
30.....73894
31.....73894
32.....73894
33.....73894
34.....73894
35.....73894
36.....73894
37.....73894
38.....73894
39.....73894
41.....73894
42.....73894
43.....73894
44.....73894
45.....73894
46.....73894
47.....73894
48.....73894
49.....73894
50.....73894
51.....73894
52.....73894
53 .....73889, 73890, 73894
Ch. 2.....76988
212.....76980, 76984
225.....76980, 76984
252.....76980, 76984
512.....76111
515.....76583
516.....76583
552.....76111, 76583

Proposed Rules:

1.....78910
4.....78910
9.....78910
19.....76598
23.....78910
52.....78910
204.....77053
212.....77680, 78911
227.....77680, 78911
232.....77053
252 .....77053, 77055, 77680, 78911
515.....77783
538.....77783
552.....77783

49 CFR

107.....77995, 79652
110.....79652
171.....77995, 79652
172.....79652
173.....77995, 79652
174.....79652
175.....79652
176.....79652
177.....79652
178.....79652
180.....79652
385.....78579

Proposed Rules:

390.....75206
Ch. XII.....78911
1548.....79264

50 CFR

17 .....73655, 73971, 73994, 76112, 76882, 77368, 78582
216.....76998
223.....79808
300.....74322
622 .....74013, 74014, 74989, 76125, 77526, 77742, 78875
635.....76427
648 .....74021, 74991, 75852, 78011, 78876
660 .....74328, 77000, 77007
665.....74991, 78876
679 .....74022, 75516, 74992
697.....75516

Proposed Rules:

10.....75977
17 .....73722, 75977, 79942
21.....75977
217.....79072
300.....79836
600.....79836
622.....74588, 78625
648.....74591, 76600
665.....74387
679 .....74102, 75569, 75570, 76435

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws/current.html*.

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H.R. 7776/P.L. 117–263
James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Dec. 23, 2022; 136 Stat. 2395)

H.R. 4373/P.L. 117–264
Further Additional Continuing Appropriations and Extensions Act, 2023 (Dec. 23, 2022; 136 Stat. 4167)

Last List December 23, 2022

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